

FST FA 04 0201276 S	:	SUPERIOR COURT
SUZANNE NOWACKI	:	JUDICIAL DISTRICT OF STAMFORD/NORWALK
VS.	:	AT STAMFORD, CONNECTICUT
MICHAEL NOWACKI	:	SEPTEMBER 30, 2009

BEFORE THE HONORABLE STANLEY NOVACK, JUDGE

A P P E A R A N C E S:

Representing the Plaintiff:

ATTORNEY KEVIN COLLINS

Representing the Defendant:

SELF REPRESENTING

Recorded and transcribed by:
Carrie Parker
Court Recording Monitor

1 THE COURT: Good morning. Please be seated.
2 (Other matters were heard 10:41:46.)
3 THE COURT: Okay. If everybody is here, we'll
4 resume with the Nowacki hearing. The record should
5 indicate that Mr. Nowacki is here.
6 MR. NOWACKI: Yes.
7 THE COURT: Did I hear something?
8 ATTY. COLLINS: Spike Rothman.
9 THE COURT: Oh. That the former Mrs. Nowacki,
10 Mrs. Sullivan's here and her counsel's here, Kevin
11 Collins.
12 ATTY. COLLINS: Yes, Your Honor.
13 THE COURT: And Ms. Bernier are you hearing this
14 case?
15 MS. BERNIER: Your Honor, I --
16 THE COURT: I mean, you can watch if you like.
17 MS. BERNIER: Oh, no. Thank you. I believe I'm
18 here to be called as a witness.
19 THE COURT: Oh, okay.
20 MS. BERNIER: On behalf Mr. Nowacki.
21 THE COURT: I just didn't know if you were here
22 in this case, that's all. I didn't want to hold you
23 up.
24 All right.
25 MR. NOWACKI: Good morning, Your Honor.
26 THE COURT: Hello.
27 MR. NOWACKI: As you know on Monday morning, I

1 was here and I filed a motion for a --

2 THE COURT: Yes.

3 MR. NOWACKI: -- continuance.

4 THE COURT: Mr. Diamond told me about it
5 yesterday --

6 MR. NOWACKI: Right.

7 THE COURT: -- but I didn't see it, mostly.

8 MR. NOWACKI: Right.

9 And obviously, you know, in -- in the normal
10 course of discovery, and as you know, the discovery
11 was not handed to me until September the 10th at
12 roughly 4:15 in the afternoon, that there's a lot of
13 complexities to the testimony that's been given up
14 to this period of time that relates to matters that
15 are inconsistent between the sworn financial
16 affidavit that was filed on August the 7th by the
17 plaintiff and signed by Ami Jayne Wilson, and what
18 it appeared in the tax returns, which were now put
19 into in the case of the year 2008 into evidence, and
20 the years 2006 and 7 into exhibit status.

21 And that in reviewing those inconsistencies we
22 have some issues that relate to income-related
23 issues, which I understand is what the motion for
24 modification is based upon, our income related
25 issues in regards to that which was in the tax
26 returns for the years 2006, 2007, and 2008, on
27 foreign income, dividend income that in 2006 was

1 \$9,917 according to the exhibit in the tax return.
2 In 2007, was \$11,866, and in 2008, for \$9,259.

3 And that that information in regards to that
4 foreign dividend income was not reflected in the
5 plaintiff's sworn financial affidavit date August
6 the 7th.

7 So that inconsistency and the derivation of
8 where that income is coming from requires
9 documentation which was ordered by the Court, in my
10 opinion, by the judgment that Judge Shay made on
11 June 15th in regards to production, that then was re-
12 affirmed in regards to the need to produce all of
13 those documents on August 3rd by Judge Malone. And
14 not all of those documents have been turned over to
15 me to valid what the source of this foreign income
16 is. Because it was not reflected in the August 7th
17 sworn financial affidavit either by commission or
18 omission.

19 I don't have any explanation for why that
20 information isn't there, but as part of the assets
21 of the financial affidavit as well, there's no
22 reference whatsoever to the asset that is generating
23 that income. It doesn't relate.

24 Everything else that's been put into our
25 testimony up to this period of time has been
26 reflected of information that was on 1099s. And
27 that we've gone through that in great detail in the

1 course of my testimony last time. And that we have
2 no background at all in regards to what the source
3 of this income is that is generating, you know, over
4 \$10,000 in dividends. And that -- that's a sizable
5 amount of money if you look at what the yield curve
6 is on the average New York Stock Exchange holding.
7 And that there needs to be an explanation for what
8 that income relates to that has not been provided as
9 part of the documentation that's been turned over.

10 So that's point number one, is that we have a
11 lot of inconsistencies between the information in
12 the financial affidavit and that which is included
13 in the tax return. And that's not the only one.

14 You know, in the --you know, going through the
15 tax returns -- I came in on Monday to go through the
16 tax returns on the second floor -- you know we also
17 discovered that in the process of evaluating that,
18 that there's some sort of a property that exists
19 that's depreciated on a accelerated basis in the
20 2007 and the 2008 returns.

21 It's listed as something that's been held since
22 1990 as, it looks like, Sea Bright. But I -- I
23 don't know what the -- the reference point here is.
24 But it's on the tax return. And in order for you to
25 depreciate a property that is listed on the tax
26 return, you would need to have income relating to
27 that property in order for there to be a

1 depreciation.

2 You can't depreciate a property that doesn't
3 have income attached to it. And there's no
4 reference in the financial affidavit of that
5 property, its existence, or the income that would
6 have allowed for their holding the depreciation
7 until the 2008 tax return.

8 And if you checked the -- what's in the court
9 record at this point in time at 2007, there's a
10 piece of paper there in the tax return, that refers
11 to -- that their holding the depreciation on that
12 asset to be declared at a later point in time, which
13 was then declared in a either re-filed tax return or
14 in the 2008 return. That again, relates to a
15 subject of income.

16 And we understand that this isn't -- you know
17 and I've been reminded quite often by Your Honor,
18 that this is an income-related subject. But that
19 also the accuracy of the complete financial picture
20 of both parties becomes a matter that the Court can
21 consider in the context of the modification looking
22 at the financial status of both parties.

23 So we have a substantial differential between
24 that which is in the tax returns, and that is the
25 reason why I'm asking for a continuance. And in
26 order to get to that information, I'm going to need
27 to put through motions to appoint a commission to

1 get the accountants in here to testify about the
2 validity of that which they entered on the tax
3 returns that they also attested to, to get to the
4 bottom of this income coming in from this foreign
5 source, to get to the depreciation issue. And those
6 are just two of the issues that basically, you know,
7 are at the forefront and the most important ones.

8 But there's also a great deal of inconsistency
9 between looking at the -- the claimed expenses on
10 the financial affidavit, and comparing them to the
11 bank records that I've received just on September
12 the 10th. And there's a great deal of detail about
13 money that's being transferred back and forth
14 between the joint account and the sole account of
15 Suzanne Sullivan.

16 We also have, you know, an issue that is also
17 unexplainable that requires a commission to be
18 appointed to bring in the trustee, James Giddens,
19 (Phonetic) who just on, I believe on Monday, I
20 received documentation to identify who James Giddens
21 was. I've been asking for since I received this
22 production, through emails to Attorney Collins to
23 identify who this trustee is that's listed on the
24 1099s.

25 And I only then received information that this
26 was, if you -- if you look at the sequence of what's
27 in the tax returns, what it appears as though the

1 Lehman Brothers did when Lehman Brothers knew that
2 they were in financial difficulty, is that they took
3 the assets of the Neuberger and Berman clients and
4 they moved them into a trusteeship, which then
5 resulted in 2008, when the firm knew that it was in
6 trouble. What it appears happened was that the firm
7 then notified its clients that they were moving this
8 asset into, that resulted in an explanation that I
9 couldn't put together until I got the documentation,
10 of a bifurcated 1099 in the year 2008.

11 So what the firm did based on what I've
12 observed, based on the paperwork that was just sent
13 to me on Monday is, that they took the assets of the
14 Neuberger and Berman clients and put them into a
15 trusteeship, because many of the Lehman partners had
16 money invested in the trusteeship that at that point
17 in time existed at Lehman Brothers, plus also the
18 investors that were Neuberger and Berman.

19 And what they did by doing that is they
20 protected their assets from potentially being part
21 of the bankruptcy settlement. Because immediately
22 after the bankruptcy was filed, the Neuberger
23 clients and the record keeping them, was then
24 transferred to something called Ridge Clearant
25 (Phonetic). All right.

26 So in 2008, when there was this \$100,000
27 distribution that is noted on the Chase statement as

1 having a \$15 wire transfer fee from a foreign
2 account is also a subject of, if you get a
3 distribution from a trustee account, (according to
4 IRS rules based on what I've seen on the IRS
5 website), that requires that that be counted as
6 income.

7 That is a distribution from a trusteeship. And
8 therefore that becomes an income item for the Court
9 to consider. And in order for the Court to consider
10 that in my opinion, we're going to need to get
11 Neuberger and Berman in here to explain the position
12 of what existed here. Because there is also the
13 possibility that there is a trust account that
14 exists somewhere that resulted in the co-mingling of
15 this asset on the 1099s, that is tied to this income
16 from the foreign source that has yet to be
17 identified.

18 And that I do have the, you know, ability here,
19 to make sure that in the Court making its decision,
20 that the Court has all of the information that it
21 requires to look at things like income distributions
22 from trusts. And in order -- if there is such a
23 foreign trust that exists, we need to get a copy of
24 the disbursements.

25 Because in Judge Shay's court order of June
26 15th, there are very specific things that are talked
27 about in the court order that relates to the

1 distribution of assets from a trust from which I
2 believe that exists and is money that is somewhere
3 other than the United States.

4 And that's indicated tax returns.

5 THE COURT: Thank you. Mr. Collins, you want
6 to --

7 MR. NOWACKI: And I have more that -- that's on
8 the income side that relates to this, that --

9 THE COURT: Well, no you've made your point.

10 MR. NOWACKI: But --

11 THE COURT: You've made your point.

12 MR. NOWACKI: And that's the reason why I need a
13 continuance, is I've got to get these motions to
14 appoint commissions, to get the accountants in here
15 to testify, because these are unexplained issues
16 that I don't have documentations to because they
17 weren't attached to the tax returns.

18 And even Your Honor noted on the record, I
19 believe, that there's something in the 2008 return
20 called a -- a Form 10 or Schedule 10, that relates
21 to disbursements, that it says, See Statement 10.
22 And there's no documentation that the Court noted on
23 that which was turned over to me.

24 Because in 2007, we got a file copy of the
25 return. And in 2008, what was given to us was the -
26 - was client copy. And I believe that there are
27 pages missing from that tax return.

1 And that the only way to do that is to get a
2 certified copy from the accountants who filed the
3 return.

4 THE COURT: Thank you.

5 MR. NOWACKI: And I believe that I'm entitled
6 to -- to make that request.

7 THE COURT: Thank you.

8 MR. NOWACKI: Thank you.

9 THE COURT: Mr. Collins, do you want to be
10 heard?

11 ATTY. COLLINS: I do, Your Honor, please.

12 It's really kind of a conundrum here, because
13 what Mr. Nowaki is saying in short is the affidavit
14 is fraudulent, and this hearing cannot be continued
15 because I need a opportunity to prove that it's
16 fraudulent because I know it's fraudulent for all of
17 these various reasons.

18 Now, I've never been faced quite with what I'm
19 dealing with in this case in the following way. Mr.
20 Nowacki's wild imagination --

21 THE WITNESS: Your Honor, I object to that
22 comment because that's speculative by Mr. Collins.

23 ATTY. COLLINS: No, it's fact. His wild
24 imagination --

25 THE COURT: Objection maybe noted. Go ahead.

26 ATTY. COLLINS: Your Honor --

27 THE COURT: You said it. Continue.

1 ATTY. COLLINS: -- is something which I don't
2 quite know how to deal with.

3 So I did a little litmus test this week. So
4 when Mr. Nowacki is saying to me, There's got to be
5 a trust because there's this guy James Giddens. And
6 James Giddens is listed as a trustee on the 1099
7 from 2008.

8 I said, all right. I'm going to send Mr.
9 Nowacki something which explains who James Giddens
10 is. If James Giddens walked through this door right
11 now, there isn't a person in this courtroom who
12 would recognize him. Because as Mr. Nowacki sort of
13 pointed out to the Court, Mr. Giddens is the trustee
14 appointed for Lehman Brothers. He's on everybody's
15 1099 for the period in question who have accounts
16 with Neuberger Berman, who was either a wholly owned
17 subsidiary of Lehman Brothers. I don't really know
18 the relationship between Lehman Brothers and
19 Newberger. I don't really care.

20 The reason I say it was a litmus test was
21 because I took the information, and I emailed it to
22 Mr. Nowacki. And the reason it's a litmus test is
23 any reasonable person would understand or would
24 Google Mr. Giddens and find out that all he is --
25 and I'm sure he's getting paid well for all that he
26 is -- but all he is, is the trustee because of
27 Lehman Brother's financial problems.

1 And that affects my client insofar as she has an
2 account with Neuberger Berman, which is owned or
3 managed or whatever by Lehman Brothers. I would
4 have expected any reasonable person to say, Well
5 that explains it. That explains why she has a 1099
6 from a trustee.

7 Instead, what this does is it morphs into even a
8 bigger conspiracy: That, ah. There's a -- I mean,
9 it's so patently obvious.

10 So now the question becomes, what do I as the
11 lawyer do. Mr. Nowacki, as I've said on more than
12 one occasion, is always looking for monsters under
13 the bed.

14 And --

15 MR. NOWACKI: I object, Your Honor.

16 ATTY. COLLINS: That's fine.

17 MR. NOWACKI: I've never used that phrase.

18 ATTY. COLLINS: No, but I have.

19 MR. NOWACKI: And that's speculative on Attorney
20 Collins' part.

21 ATTY. COLLINS: We'll prove it.

22 THE COURT: Objection may be noted.

23 All right.

24 ATTY. COLLINS: So that being said, Your Honor,
25 the thing is, is that I don't feel that it is fair
26 to my client to respond to every wild allegation
27 made by Mr. Nowacki. Because at the end of the day,

1 what we're doing here on this motion to modify is
2 peanuts, compared to what his real motivation is.

3 And his real motivation is, and he has stated it
4 to me, he's going to bring everybody down. And he's
5 going to bring them down to the item. He told me as
6 recently as day before yesterday there are nine IRS
7 investigations pending as a result of his actions.
8 Every person who has a Neuberger Berman account is
9 at risk.

10 Her parents are on the hook. Her husband is on
11 the hook. She's on the hook. The accountant is on
12 the hook. The attorney who did Grandma's estate 35
13 years ago is on the hook. I'm on the hook. Ami
14 Jayne Wilson who took the acknowledgment of my
15 client on her financial affidavit is on the hook.
16 Everybody is on -- he is a threat.

17 He's a threat to everybody that he comes in
18 contact with. He's --

19 THE COURT: Let's not get carried away.

20 ATTY. COLLINS: But Your Honor, it's his
21 motivation.

22 THE COURT: Let's not get carried away.

23 ATTY. COLLINS: It's his motivation.

24 And the problem with that is, and I didn't
25 interrupt Mr. Nowacki, so I respectfully request the
26 same because he spews nonsense and bile.

27 And the point that I would make is, is that,

1 Your Honor, what we're faced with today is he wants
2 to do the depositions of the accountants based upon
3 some cockamamie speculation that there's some foreign
4 trust.

5 She testified, There is no foreign trust.

6 He takes the word trustee and he runs with the
7 ball.

8 Does Your Honor want to know what the property
9 is that he refers to that's been depreciated? He has
10 sent me as recently as last night, an email that
11 which would suggest you can't depreciate property
12 unless it's income producing. And the property is
13 located in Sea Bright, New Jersey.

14 Well the reality is, this is his imagination
15 again. It's an automobile. It's a Seabring. And
16 Mr. Barrington depreciated it as part of his business
17 expense. There's no property. There's nothing in
18 Sea Bright, New Jersey. Okay?

19 But the problem that we face is, he just keep
20 throwing spaghetti at the wall and seeing what will
21 stick.

22 That having been said, if he wants to go do his
23 investigation because he says -- because I know the
24 type of a man I'm dealing with here, okay. Whatever
25 Your Honor decides; if it's not to his liking, okay,
26 there'll be an appeal. And the basis of the appeal
27 is being set right now. And the basis of the appeal

1 is, They lied on the affidavit because I think
2 differently. That's exactly what he's saying.

3 So if he wants a continuance to go file motions
4 for open commissions, the post does --

5 See, this is a little different because he's
6 saying the affidavit that is in front of Your Honor
7 is an inaccurate and untrue affidavit. And he wants
8 to do investigation to prove that.

9 And he's going to spend a lot of money to do
10 that. And God bless him, because he's cost her
11 plenty. Cost her plenty. And we're not done with
12 that, because at the end of the day with all the
13 money and all the time I've spent -- and Your Honor
14 knows what Mr. Colin testified as to why he got out
15 of this case, because of the threats leveled by Mr.
16 Nowacki. And he is a threat. He is a threat.

17 He's one of the most threatening people I've
18 ever met. Okay.

19 And that having been said, let him go do his
20 depositions. If that's -- because he's saying the
21 affidavit before Your Honor is an inaccurate
22 affidavit. And when he's done, and when he's done
23 and he finds out that his allegations are as silly
24 and as baseless as his cockamamie belief that there's
25 a piece of property in Sea Bright, New Jersey instead
26 of an automobile, then I would hope that this Court
27 would order him to pay some or all of the legal fees

1 associated with us being on these wild goose chases
2 that he takes us on every week.

3 So I don't know. If he's saying it's a
4 fraudulent affidavit. I don't know we got out from
5 under that. But it's all in this man's wild head,
6 wild imagination. I don't know what to say about it.

7 THE COURT: 30 words or less, Mr. Nowacki.

8 MR. NOWACKI: Mr. Collins' adversary is not
9 Michael J. Nowacki. Mr. Collins' adversary is the
10 Truth.

11 THE COURT: Okay.

12 MR. NOWACKI: And I hope in this courtroom,
13 outside of the wild gesticulations that we just
14 observed on behalf of Attorney Collins, that the
15 personal attacks are -- are his only defense.

16 There is no evidence that has been shown to me
17 that supports foreign income that's on the tax
18 return. It's not there. There has to be a source
19 for that income.

20 THE COURT: All right.

21 MR. NOWACKI: And that source has not been
22 documented.

23 THE COURT: We're being repetitious now. I
24 don't want hear any more. I don't want to hear any
25 more.

26 This is probably the most melodramatic
27 performances I've seen in a motion since I've been

1 doing this. And I've been doing this for a long
2 time.

3 I understand you are not a lawyer, Mr. Nowacki,
4 and I'm giving you as much leeway as I can here
5 because you impress as being a bright young man.
6 Okay?

7 The procedure you're suggesting isn't the way
8 the procedure goes. In the middle of a hearing, you
9 don't stop a hearing to go do a further
10 investigation. You've testified and we're hearing
11 the same underlying basis here, is that you're
12 concerned about this foreign tax credit; that seems
13 to be the main thrust of your complaints.

14 You advise the Court, and it was in the record,
15 too, that just what Mr. Collins has said, that you've
16 informed Internal Revenue. And they told you that
17 they put nine people on that case.

18 As part of their investigation with your help,
19 they can look into all these things. And I've told
20 you many times during this hearing, if you're
21 successful, and the result that you come up with
22 after this motion is unsatisfactory to you, you can
23 certainly move to open it, and the Court would
24 consider it. Okay?

25 I'm not going to stop the hearing in the middle
26 now, to let you to continue with the quest that
27 you're on.

1 So the motion is denied. And we are going to
2 proceed with the hearing. We're going to finish it.
3 And you both have you appellate rights if you like.
4 I'm not the last word, I understand that. But I'm
5 going to do the best I can with what I heard.

6 I just want to point out a couple more things to
7 you, just to help guide us along. And I haven't
8 reached any conclusions yet, obviously, but based on
9 what you've told me so far, at the time that the
10 separation agreement was entered into, you folks did
11 not define the term income.

12 But, I believe your testimony was, and I believe
13 that the evidence was, that you were comparing W2
14 incomes to reach the percentage of contributions.
15 Correct me if I'm wrong, but I think that's what I
16 thought you said.

17 MR. NOWACKI: Well, Your Honor, that was a piece
18 of paper that was not the sole basis --

19 THE COURT: No. I'm not talking about the piece
20 of paper. I thought your testimony was, you were
21 making twice as much as your wife.

22 MR. NOWACKI: Well, we -- we used that as the
23 benchmarking tool.

24 THE COURT: Well that's what I'm saying.

25 MR. NOWACKI: But that --

26 THE COURT: I don't want to debate it with you.

27 All I'm trying to say is that it seems to me that

1 you're going to many extremes now.

2 You've got in the evidence so far, of what the
3 incomes of yourself was and your wife was, then and
4 now. And that's what we compare, among the other
5 statutory factors that were considered.

6 So, how much of an impact all this other stuff
7 that your talking about is going to make; whether
8 it's true or whether there's something more to be
9 said, is another issue. All right.

10 It's perjury, fraud, things of that sort.
11 That's a different issue.

12 So I don't want to make any more speeches. I
13 just want to finish this hearing, and do it the best
14 I can.

15 So we're going to resume the hearing which was
16 the start of the cross-examination of Mrs. Sullivan
17 on Mr. Nowacki's presentation.

18 ATTY. COLLINS: And Your Honor, to that point, I
19 believe that Mr. Nowacki has Ms. Bernier here. I
20 have no objection to her be taken out of order.

21 THE COURT: Do you want to do that?

22 MR. NOWACKI: Please.

23 THE COURT: All right. If nobody objects, come
24 on up.

25

26

27

1 L A C E Y B E R N I E R

2 with an office at 30 Washington Ave, Greenwich,
3 Connecticut was duly sworn and testified as follows:

4 THE CLERK: And for the record, please state
5 your name, and place of business.

6 THE WITNESS: Lacey Bernier, 30 Washington
7 Avenue, Greenwich, Connecticut.

8 THE COURT: Please be seated. Okay.

9 DIRECT EXAMINATION BY MR. NOWACKI:

10 Q Good morning, Lacey.

11 A Good morning.

12 Q How are you today?

13 A I'm well, thank you.

14 Q Would you please describe your role and what your
15 view was of the process of the construction of the parenting
16 plan that we have joint, legal and physical custody; was it
17 your opinion that that was in the best interests of the
18 children as it was designed?

19 ATTY. COLLINS: Objection, relevance. We're
20 here on a purely financial motion Your Honor.

21 MR. NOWACKI: It relates to the financial
22 issues.

23 ATTY. COLLINS: I don't see how.

24 THE COURT: I'll permit that answer, and we'll
25 see where we're going.

26 A My role as g.a.l. was to meet with you and your
27 former wife, to see if we could craft a parenting plan that

1 was consistent in the best interests of the children. And
2 we did arrive at a parenting plan.

3 Q And in your professional opinion, and I'm going to
4 ask you some questions about how long a period of time have
5 you served in your role as g.a.l. Do you believe that the
6 best interests of the children to the best of your knowledge
7 have been served by this agreement?

8 A At the time I -- I believed that, yes.

9 Q And your answer suggests that you don't believe that
10 any longer?

11 A I have no idea. I haven't had contact with your case
12 in years.

13 Q Well, I would suggest that that may not be an
14 accurate statement inasmuch we had contact with you as
15 recently as February of this last year, is that correct?

16 ATTY. COLLINS: Objection, Your Honor.

17 THE COURT: Sustained.

18 Q All right. According to your bills, didn't you issue
19 a bill in February of this year for your involvement in
20 continuing issues in the case?

21 A Yeah. It was just --

22 ATTY. COLLINS: Objection, Your Honor.

23 Relevance.

24 THE COURT: What's the relevance?

25 MR. NOWACKI: The relevance is, is that she just
26 made a statement that said that she hadn't have
27 involvement in this case in years. And the fact of

1 the matter is and Your Honor raised this subject,
2 about the reason why the g.a.l. was not used to
3 mediate this dispute. Which you raised the last
4 hearing.

5 THE COURT: No, that's correct. But so the
6 question is, has she submitted a bill recently? Is
7 that what you --

8 BY MR. NOWACKI:

9 Q Well, what I'm saying to you is that you were
10 involved in issues surrounding your role as g.a.l. as
11 recently as February of 2009, is that correct?

12 A It was a short conversation. I hardly call that
13 involvement. It was a short conversation on the phone.

14 Prior to that, it'd had been years since I've met with
15 either one of you or your children.

16 Q Okay. In terms of meeting with the children, that's
17 correct. But involvement, if you were being paid for your
18 services, you were involved, correct?

19 ATTY. COLLINS: I'm going to object, Your
20 Honor. She's answered the question.

21 THE COURT: Sustained. You don't have to
22 interpret her answer.

23 BY MR. NOWACKI:

24 Q All right. The question is, when you were called in
25 February of 2009, it was --

26 THE COURT: By whom?

27 MR. NOWACKI: By me.

1 THE COURT: Oh, all right.

2 Q -- to assist in the scheduling of a hearing to move
3 along this case, is that a fair assessment of your
4 recollection of why you were called in February of 2009?

5 A I -- you know, I really can't remember. I know it
6 was to help out with some communication. I don't remember
7 the reason for that call.

8 Q Right. Do you recollect a series of emails that were
9 faxed to you or forwarded to you via email?

10 A Yes.

11 Q In an exchange between Tom Colin and myself?

12 A Yes.

13 Q In those emails was there any reference point
14 whatsoever to tension that existed between Attorney Collins
15 and myself?

16 ATTY. COLLINS: Objection, Your Honor. Hearsay.

17 THE COURT: Sustained. You called the witness.
18 The question was Mr. called you. You don't recall.
19 He's suggesting to you whether or not he called you
20 to help settle the matter, is that the question
21 you're saying?

22 MR. NOWACKI: To try to get a hearing scheduled
23 to move along the process.

24 THE COURT: Okay. That's what the purpose of
25 the call, you don't recall.

26 THE WITNESS: I don't recall, I'm sorry. I just
27 have no recollection of what it was for.

1 BY MR. NOWACKI:

2 Q Do you have a copy of your bills that referred to
3 before you came to testify today?

4 A What bills?

5 Q From February of last year?

6 A I could probably find it at home. I'm sure. Don't
7 you have it?

8 Q Well, I do. I'm just curious about testing your
9 memory here with regard to what you're deciding to recall
10 here, because you do not recall the conversations, I have
11 some very specific recollections of the conversations that
12 we had on email in regards to what was going on in the case,
13 at that point in time.

14 ATTY. COLLINS: Objection, Your Honor. He's
15 testifying, first of all. Second of all, I'd like to
16 point out to the court that to the best of my
17 knowledge and information, Ms. Bernier's here not
18 under subpoena, but she's under here frankly, out of
19 the goodness of her heart, at the request of Mr.
20 Nowacki. So she's under no obligation even to
21 testify, let alone bring documentation with her.

22 THE COURT: All right.

23 MR. NOWACKI: Your Honor, I would like to
24 correct Attorney Collins in his statement, which he
25 has a tendency to say many things that are not true
26 on my behalf.

27 I called -- I reached out to Lacey, I believe,

1 last Friday after the hearing in this court where
2 Your Honor raised certain issues about why the g.a.l.
3 was not involved, since it was part of the parenting
4 plan.

5 THE COURT: Last Friday? Because he was talking
6 about February I thought.

7 MR. NOWACKI: No, I'm talking about the reason
8 why Lacey is here today is because I requested that
9 she be here.

10 THE COURT: Well, she's here.

11 MR. NOWACKI: Right.

12 THE COURT: Let me ask you for an offer of
13 proof. What are you trying to establish through this
14 witness, that's what I'm --

15 MR. NOWACKI: What I'm trying to establish is
16 her recollections of certain conversations that she
17 was privy to that will refute Attorney Collins'
18 testimony that he gave in regards to certain aspects
19 of the financial structure of this agreement on
20 meetings that Mr. Colin seemed not to be able to
21 recollect.

22 THE COURT: I'm not sure I understand. Ask the
23 question. You can object as you go along.

24 ATTY. COLLINS: I think he was saying she's a
25 rebuttal witness to Attorney Colin.

26 THE COURT: Well that's what he's saying, but I
27 don't understand.

1 BY MR. NOWACKI:

2 Q Right. So the question is at the point in time that
3 you were called in February 2009, were you asked by me to
4 intercede with Attorney Colin to get a hearing date set up
5 because we could not come to moving this case along between
6 Attorney Colin and I because he was refusing to schedule a
7 hearing on the Motion for Modification?

8 A You know, I don't -- I'm sorry, I don't remember. I
9 really don't remember.

10 THE COURT: What do you recall about your
11 conversation with Mr. Nowacki, if you do recall?

12 Do you recall anything?

13 THE WITNESS: From last February?

14 THE COURT: Yes, February of '09.

15 THE WITNESS: I don't recall. Sorry. I -- I
16 really don't recall.

17 THE COURT: All right.

18 THE WITNESS: I --

19 THE COURT: All right. If that's your answer,
20 that's your answer.

21 Go ahead.

22 BY MR. NOWACKI:

23 Q Do you recall how much you were paid for your
24 services in February of 2009?

25 ATTY. COLLINS: I'm going to object, Your
26 Honor. Relevance? We're on a motion to modify.

27 MR. NOWACKI: I'm trying to get the witness to

1 recollect specifics of the meetings, of the telephone
2 conversations and the emails. And it is my belief
3 that there's a conflict of interest that exists here
4 between the authenticity of this testimony, because
5 Lacey Bernier receives recommendations from
6 attorneys.

7 And that what I'm trying to demonstrate here is
8 how difficult it is what a response of, I do not
9 remember, all right? And what I will do when Lacey
10 is not here, because I am not going to embarrass her
11 in this forum. But I have chapter and verse, every
12 single email that was exchanged to validate her
13 services, the times associated with it. A copy of
14 the emails that existed that she's choosing not to
15 recollection.

16 Because there's a conflict of interest that's
17 inherent in this process. And I saw it in the
18 testimony of Attorney Colin. And I'm going to drill
19 down to the specific dates and records with the
20 records from my attorney, Tom Parrino, that I've
21 retrieved, on the billable hours on these meetings.

22 ATTY. COLLINS: Your Honor --

23 MR. NOWACKI: Because, I've got to get to the
24 facts.

25 ATTY. COLLINS: All right. I don't know what
26 this has to do with the Motion for Modification.
27 What he's doing however, is impugning the integrity

1 and the credibility of this witness. And what he's
2 suggesting is, is that her testimony is manufactured
3 in some way because she gets referrals within this
4 system.

5 And I don't -- that's despicable.

6 THE COURT: All right. Okay.

7 ATTY. COLLINS: But Your Honor, I mean, she's
8 here. As I suggested --

9 THE COURT: The objection's sustained.

10 ATTY. COLLINS: Thank you.

11 THE COURT: Now, if you've got an email
12 reference to help the witness refresh her
13 recollection on the February conversation, show it to
14 her. Let her look at it, and see if it refreshes her
15 recollection.

16 MR. NOWACKI: Your Honor, I will tell you that
17 the series of emails that I'm going to present when I
18 go on the stand will refute a lot of this testimony
19 of recollection.

20 There are bills here. There's a check that she
21 was paid for. To suggest that Attorney Colin and
22 Lacey Bernier have no recollection of certain
23 meetings or certain conversations, all right?

24 Because I have to ask a question.

25 BY MR. NOWACKI:

26 Q Have you had any conversation with Tom Colin since
27 Friday of last week?

1 A Since when?

2 THE COURT: Friday of last week.

3 Q Since Friday of last week, have you talked to
4 Attorney Colin?

5 A On a different case. Yeah, I have.

6 Q And you had no conversation in regards to his
7 testimony here last Thursday?

8 A I didn't even know he was here last Friday.

9 Q That's not what the question was.

10 A No. To answer your question, no.

11 Q And you received an email from me on Friday saying
12 Attorney Colin was here, and that he had given testimony
13 where he had vague recollections of a series of meetings
14 that related to financial issues in this case; one of which,
15 a meeting that you sat in on. And that --

16 A Oh, Michael, I don't remember.

17 Q -- the reason why you're here --

18 A I'm sorry.

19 Q Okay. Is to get to the bottom line of the
20 recollection of the structure of the educational expenses; a
21 meeting with which you were present for, that Attorney Colin
22 seems to have no recollection about that meeting.

23 A What's your question.

24 Q So here's my question: do you recollect having a
25 meeting where Tom Colin, myself, Suzanne Nowacki at that
26 point in time, you and I were present in December of 2004?

27 ATTY. COLLINS: Objection, Your Honor. This --

1 now -- this is the first I've heard --

2 THE COURT: Sustained.

3 ATTY. COLLINS: Thank you.

4 BY MR. NOWACKI:

5 Q Do you remember a meeting that was held in December
6 of 2004, where the subject of education and the funding of
7 education was a matter of the parenting plan that was on the
8 table?

9 ATTY. COLLINS: Objection. It's not only --
10 it's pre-dates the decree of dissolution, and it's
11 leading.

12 THE COURT: Sustained.

13 Q Do you remember being in Tom Colin's office in
14 December of 2004?

15 ATTY. COLLINS: Irrelevant. Objection.

16 THE COURT: Sustained. You can't retry your
17 divorce case.

18 MR. NOWACKI: I understand that, Your Honor,
19 but --

20 THE COURT: I call your counsel --

21 MR. NOWACKI: But Attorney Collins here has made
22 the case to say that the educational understanding
23 tied to the agreement, based upon the vague
24 recollections of Attorney Colin is a very important
25 subject in the determination of what the judge is
26 going to rule here.

27 THE COURT: Would you spell that out for me,

1 because I'm missing something?

2 MR. NOWACKI: All right. That Attorney Collins
3 spent a great deal of time to suggest that the
4 structure of the agreement on educational expenses
5 was not modifiable.

6 THE COURT: For college.

7 MR. NOWACKI: For college.

8 THE COURT: That's all he was talking about.

9 MR. NOWACKI: That's right. I'm talking about
10 the meeting that was held in December of 2004; and I
11 got the bills here. And I can refresh the --

12 THE COURT: It's modifiable. I'll make it easy
13 for you. It's modifiable, okay?

14 MR. NOWACKI: Thank you.

15 THE COURT: Okay. So let's not spend a lot of
16 time on it.

17 MR. NOWACKI: All right, fine. Thank you, Your
18 Honor. I appreciate the clarification.

19 THE COURT: That's a preview of coming
20 attraction.

21 MR. NOWACKI: Thank you. I appreciate that.

22 THE COURT: I say that with not giving Mr.
23 Collins a chance to argue it.

24 MR. NOWACKI: Right.

25 BY MR. NOWACKI:

26 Q The question in regards to the educational discussion
27 that occurred, do you remember having a very specific

1 conversation where I laid out -- not my attorney -- a very
2 specific plan to show that it was in our children's best
3 interests to resolve the educational issue and pull off the
4 cap?

5 ATTY. COLLINS: I'm going to object.

6 THE COURT: Sustained.

7 Q All right. Do you remember the discussion of what a
8 state college education costs in 2004?

9 ATTY. COLLINS: Objection.

10 Q That you were part of the meeting at.

11 THE COURT: Sustained.

12 Q Were you part of any conversations as part of your
13 role as a g.a.l. in discussions concerning the funding of
14 college education?

15 ATTY. COLLINS: Objection.

16 THE COURT: What's the relevance of that?

17 MR. NOWACKI: I'm trying to indicate the
18 structure of the financial arrangement of how we
19 ended up at 60-40.

20 THE COURT: Oh, the property division, you mean?

21 MR. NOWACKI: Correct. And it related to the
22 subject of the differential between what I was taking
23 as a future obligation as an off-set of why we ended
24 up at 60-40, because Attorney Collins has made this
25 suggestion to the Court that in some way shape or
26 form, that was not a fair and equitable settlement.

27 THE COURT: No. That's a fair statement by you.

1 I can't quarrel with that.

2 MR. NOWACKI: But that's why I'm trying to get
3 to the essence of the validation of the question that
4 I asked Attorney Colin, which was admitted, is do you
5 recollect a meeting that was held in your offices to
6 discuss that subject.

7 THE COURT: I understand. You don't have to
8 spell it out. When I understand it, I understand it.
9 When I don't, you have to spell it out.

10 So are you telling me, sir -- and I'm trying not
11 to interfere. I'm really trying to listen. But I've
12 got to help you move this along, because we're
13 getting stuck in various areas. Are you telling me
14 that from your viewpoint the basis of the property
15 division of 60-40 was partially due to the fact of
16 your obligation to undertake your obligation for
17 college expense; is that what you're saying?

18 MR. NOWACKI: Correct. It was as I -- as I've
19 stated --

20 THE COURT: All right.

21 MR. NOWACKI: -- there were three things that
22 caused for there to be --

23 THE COURT: You told me. One is you brought
24 \$180,000 into the marriage. Two was the college
25 expenses. What was the third one?

26 MR. NOWACKI: Well, there's two college expenses
27 we're talking about.

1 THE COURT: Well that's -- okay. Got it.

2 All right, so --

3 MR. NOWACKI: So there's 188, and then there was
4 a difference of 200 and 200 in the difference between
5 the cost of a cap.

6 THE COURT: 200 and 200, what does that mean?

7 MR. NOWACKI: In other words, if the state
8 college education costs \$64,000, which was the number
9 that we used for the purposes of the discussion the
10 day that we met with Tom Colin.

11 THE COURT: All right. \$64,000, all right.

12 MR. NOWACKI: All right. And that the cost of 4
13 year private education was \$265,000, was the number.

14 THE COURT: Oh. So the difference was 200; for
15 two children is 400.

16 MR. NOWACKI: So it's 400.

17 THE COURT: Right.

18 MR. NOWACKI: And then you add the 200 in from
19 the --

20 THE COURT: Pre-existing asset.

21 MR. NOWACKI: Pre-existing assets, that the
22 differential between the asset division then was not
23 60-40. In fact that was a very generous offer on my
24 part. And in fact the asset allocation was something
25 less than that.

26 THE COURT: Okay. You've made that point.

27 MR. NOWACKI: Thank you. But that's the reason

1 why I asked Lacey to be there is she sat in --

2 THE COURT: All right. Now I understand --

3 Apparently --

4 MR. NOWACKI: -- discussion that day.

5 THE COURT: Apparently, Mr. Bernier doesn't
6 remember, but your testimony will be recorded. What
7 can I tell you?

8 MR. NOWACKI: Okay.

9 BY MR. NOWACKI:

10 Q During the course of your time as a g.a.l., would you
11 make an observation about how hard I worked to structure
12 this custody plan?

13 ATTY. COLLINS: Objection.

14 THE COURT: I have no doubts that you worked
15 hard, because that's your personality, sir. So I'll
16 judicial notice of the fact that you're
17 conscientious. Is that fair?

18 ATTY. COLLINS: Your Honor, I so stipulate.

19 THE COURT: All right.

20 ATTY. COLLINS: That Mr. Nowacki's a hard
21 worker.

22 THE COURT: No, I --

23 ATTY. COLLINS: Yeah; that he works hard.

24 THE COURT: Well, no. Do you recall it? You
25 may answer that if you know.

26 MR. NOWACKI: I would really like her to answer
27 the question.

1 THE COURT: Yes. Do you know? How would you
2 rate his --

3 THE WITNESS: I believe he worked hard.

4 THE COURT: All right.

5 BY MR. NOWACKI:

6 Q And did you believe that I always worked in the best
7 interests of our children?

8 A I believe so.

9 Q And do you believe that I love our two children?

10 A Michael, come on. Yes, of course you love your kids.

11 Q Unconditionally?

12 THE COURT: What was the question?

13 MR. NOWACKI: Unconditionally.

14 THE COURT: Oh.

15 ATTY. COLLINS: Your Honor, how --

16 THE COURT: Yes. I don't know, it's beyond --
17 her ability to say unconditionally.

18 THE WITNESS: I can't answer that.

19 THE COURT: Can you answer that?

20 THE WITNESS: No.

21 MR. NOWACKI: I've no further questions, Your
22 Honor.

23 THE COURT: All right. Do you have any
24 questions?

25 ATTY. COLLINS: I don't, Your Honor.

26 THE COURT: All right. You're excused. Let me
27 just -- You may go. I just want to make a note.

1 (Pause)

2 MR. NOWACKI: I believe where we left off, Your
3 Honor, is I was on the stand.

4 THE COURT: No, you'd finished. You were going
5 to start the cross-examination.

6 MR. NOWACKI: Cross-examination, correct.

7 THE COURT: Yes.

8 MR. NOWACKI: And then I'll have the opportunity
9 to cross-examine myself.

10 THE COURT: Well, rebut. We call it rebuttal.

11 MR. NOWACKI: Or rebut it? Okay.

12 THE COURT: Yes. All right.

13 MR. NOWACKI: So I'm -- I'm prepared to take the
14 stand again.

15 THE COURT: All right. No, we've got to allow
16 Mrs. to go first, because we've got to have her --

17 ATTY. COLLINS: No, I didn't cross --

18 THE COURT: Oh, you.

19 ATTY. COLLINS: I already crossed Mr. Nowacki.

20 THE COURT: Yes. Come on. Come on up, I'm
21 sorry. You're quite right.

22 MR. NOWACKI: May I bring -- you know I have no
23 idea what kind of questions -- I may need to gather
24 some of this material?

25 I don't know --

26 THE COURT: Well --

27 ATTY. COLLINS: Your Honor, I have no objection

1 to that as long as he's not testifying from it unless
2 it's necessary.

3 THE COURT: Yes. Just bring it up along side of
4 yourself, so you don't have to --

5 MR. NOWACKI: Okay. That's fine.

6 ATTY. COLLINS: Your Honor, before Mr. Nowacki
7 takes the stand can I -- and I think the Court
8 probably remembers this better than I -- we're on
9 which motion for modification?

10 THE COURT: The earliest one. 174.

11 ATTY. COLLINS: September.

12 THE COURT: Yes, the first one. 174.

13 ATTY. COLLINS: Okay. That's what I thought.
14 Okay.

15 THE COURT: That's what you elicited when we
16 started. I think 174 is the number.

17 ATTY. COLLINS: Your Honor, may I impose on Mr.
18 Nowacki? I can't seem to find that September 1. If
19 he has an extra copy and he could share it with me
20 and that would be helpful.

21 MR. NOWACKI: I don't think it's September 1 --

22 THE COURT: No, it wasn't.

23 MR. NOWACKI: It's actually an undated.

24 THE COURT: It wasn't September.

25 ATTY. COLLINS: 9-11-08.

26 MR. NOWACKI: Right. Yes.

27 ATTY. COLLINS: What I have is --

1 MR. NOWACKI: That's correct.

2 ATTY. COLLINS: -- a narrative, isn't it?

3 MR. NOWACKI: It's my usual expressive self,
4 yes.

5 THE COURT: Well we all want to be on the same
6 page. So let's -- can you find it in the Court
7 file? 174.

8 MR. NOWACKI: I have it. Well I have it, Your
9 Honor. But if the Court obviously wishes --

10 THE COURT: No, no. I made a copy of it. You
11 don't have to be sworn in again. Would you repeat
12 your name and your address for the benefit of the
13 monitor?

14

15

16

17

18

19

20

21

22

23

24

25

26

27

1 M I C H A E L J. N O W A C K I,

2 having been previously duly sworn, resumed the

3 witness stand and testified further as follows:

4 THE COURT: Please be seated.

5 THE WITNESS: Thank you, Your Honor.

6 (Pause)

7 ATTY. COLLINS: Shall I proceed, Your Honor?

8 THE COURT: Please.

9 ATTY. COLLINS: Oh, yes, Your Honor. Thank you.

10 THE COURT: I was waiting for you.

11 ATTY. COLLINS: I'm sorry, Your Honor.

12 THE COURT: It's okay.

13 CROSS-EXAMINATION BY ATTY. COLLINS:

14 Q Mr. Nowacki, your motion dated on or around

15 9-11-08 --

16 THE COURT: 9-9-08, I think.

17 ATTY. COLLINS: 9-9-08.

18 THE COURT: I think.

19 THE CLERK: 9-12.

20 THE COURT: 9-12? Is that when it was filed?

21 That's different than when it was dated.

22 Okay.

23 MR. NOWACKI: It was my birthday, Your Honor.

24 THE COURT: That's right. You got that right.

25 ATTY. COLLINS: I heard that. Have you got that
26 filed away?

27 Q Is about a 15 or 20 page motion.

1 What is your claimed basis in this motion in short, as to
2 why you believe that the current order of child support
3 should be modified?

4 A There's been a substantial change of income on the
5 upside of -- for Susanne now Sullivan, that is reflective in
6 the W2 --

7 Q That's all. I just needed to know that.

8 A -- her W2, but also in other income that she has
9 acquired.

10 Q We're going to try and keep it responsive to my
11 questions.

12 A I did. I answered your question.

13 Q Is your basis that her income has increased?

14 A Substantially.

15 Q Is your basis?

16 A That's what I just said.

17 Q Is your basis that your income has decreased?

18 A No, the -- the basis was between 2009 --

19 Q I'm just asking.

20 A No.

21 Q Is your basis that your income has decreased?

22 A At the point and time that the motion was filed --

23 Q Sir, sir.

24 A -- is a different question.

25 ATTY. COLLINS: Sir, objection, Your Honor. I
26 just would like a responsive answer. And otherwise
27 we aren't going to get done today.

1 THE COURT: All right. Well let me just help --
2 interject. I'm looking at the face of the motion.
3 I don't know if you have it in front of you.

4 THE WITNESS: I do, Your Honor.

5 THE COURT: It says, check the box appropriately
6 and explain briefly why you are seeking
7 modification.

8 And it says here, Since the day of the order,
9 the circumstances concerning this case have changed
10 as follows substantially. Mother's income now
11 substantially higher than June 25, 2005.

12 ATTY. COLLINS: Right.

13 THE COURT: That's all it says.

14 ATTY. COLLINS: I just want to make sure that's
15 what we're limited to.

16 THE COURT: Well, that's what it says.

17 ATTY. COLLINS: Okay.

18 THE COURT: If you have a copy of it --

19 BY ATTY. COLLINS:

20 Q That's the sole basis of the motion?

21 A Well, the motion also, then, attaches this document
22 that addresses various issues in regards to --

23 THE COURT: All right. Well, then I'm going to
24 let him answer the question then.

25 ATTY. COLLINS: That's right.

26 THE COURT: Because the question is, within the
27 document which is quite lengthy, are you making a

1 claim that your income has substantially decreased
2 at the time you filed the motion?

3 That's his --

4 THE WITNESS: At the time filed the motion the
5 answer was, My income was \$353,000. And I don't
6 recollect on September the 8th as to what my
7 financial affidavit said. But I presumed it was
8 higher.

9 BY ATTY. COLLINS:

10 Q All right. Well, --

11 A And this all has to do with proportionality, so --

12 Q If well, -- I'm going to get to that.

13 So I have your financial affidavit dated June 23, 2005,
14 and I have your affidavit dated October 6th, 2008, which is
15 about 3 weeks after the filing of this motion.

16 Would you agree sir, that by looking at those two
17 financial affidavits, that your income -- your gross income
18 increased?

19 THE COURT: The first affidavit was June 24?

20 ATTY. COLLINS: 23. June 23.

21 THE WITNESS: I mean, do we have to break it up
22 into sections?

23 Q No.

24 A Because --

25 Q No. I asked you about your gross income. It's the
26 first entry on the financial affidavit.

27 Salary at a certain base. What was your base on June

1 23, 2005 --

2 A No, it says it's --

3 Q -- according to this financial affidavit?

4 A The -- In the June 23rd, 2005 the base salary was
5 \$17,980 to be exact, and the base salary in 2008 was
6 \$20,073.

7 Q So, your base salary increased between June 23, 2005
8 and October 6th, 2008, correct?

9 A That's correct.

10 Q And the purpose of filing the financial affidavit on
11 October 6th, 2008 was in conjunction with the motion that
12 we're proceeding on now, is it not?

13 A October 6th --

14 Q October 6th, 2008. It's about 3 and-a-half weeks
15 after you filed the instant motion on or about September
16 12th.

17 So the purpose in preparing an affidavit in October, 2008
18 was in support of this motion?

19 A Uh -- Yes, it was.

20 Q Okay. Now, showing you your financial affidavit from
21 October 6th, 2008, and the one that you submitted on
22 September 15th, 2009, your base salary is indicated there on
23 the first entry, is slightly more on a monthly basis. Is it
24 not, sir?

25 THE COURT: What date? What date?

26 ATTY. COLLINS: The one on September 15th, 2009.

27 I'm now comparing the October 6th, 2008 to --

1 THE WITNESS: Yeah.

2 BY ATTY. COLLINS:

3 Q -- to September 15th, 2009. It's slightly more.

4 A Yeah. Slightly more. It should -- should be 200 --
5 you know, it all depends on how you calendarize these things
6 in regards to when you get your raise.

7 Q Okay.

8 A So --

9 Q But --

10 A It's slightly more.

11 Q On a linear basis, your income has increased from
12 June 23, 2005 to at least your financial affidavit of
13 September 15th, 2009. Correct, sir?

14 A Yes.

15 Q Okay. The basis in short of your motion then, is not
16 just about the increase in Ms. Sullivan's income since the
17 date of the disillusion, is it sir?

18 THE COURT: Say that again.

19 Q The basis of the instant motion --

20 THE WITNESS: Can I object to the form of the
21 question as a -- when I'm on the witness stand here
22 as -- since I'm representing myself?

23 THE COURT: Sure.

24 THE WITNESS: Pro se?

25 THE COURT: Yeah, you can.

26 THE WITNESS: Okay. I object to the form of the
27 question.

1 ATTY. COLLINS: Okay. What's wrong with the
2 form?

3 THE COURT: That's the question. What's wrong
4 with the form?

5 THE WITNESS: The form is confusing.

6 ATTY. COLLINS: Okay. All right.

7 THE COURT: That's a fair answer.

8 BY ATTY. COLLINS:

9 Q Is there an argument that you're making that other
10 than Ms. Sullivan's sole increase in income is what merits
11 the current motion to modify?

12 A No. That's not the sole reason.

13 Q Okay. Is there another reason stated in your motion?

14 A Proportionality of income. That was the basis --

15 Q And would you explain that answer, sir?

16 A Proportionality of income would be to take all
17 income. Not just the income associated with wages, because
18 at this point in time, the motion for modification is asking
19 for the overall income for both parties to taken into
20 consideration.

21 Q Okay. So --

22 A So there's income from dividends, and a -- et cetera
23 that are interest income as well as salary, and bonus.

24 Q Okay.

25 A And that's what -- that's what it's about. Is the
26 original thing that was based upon proportionality, and the
27 proportionalities have changed.

1 Q Well did you not state a moment ago, that in part at
2 least, the proportions at the time of the disillusion were
3 also relative to the asset distributions?

4 A No. I didn't say that.

5 Q When you had Attorney Bernier on the -- Ms. Bernier
6 on the stand, you didn't say that?

7 A No. What I said was that it was a 60-40
8 distribution. But that didn't relate to the subject of
9 income. No.

10 THE COURT: Yes, he wasn't talking about income.

11 THE WITNESS: I wasn't talking about income.

12 THE COURT: He was talking about --

13 THE WITNESS: I was talking about the asset
14 distribution was 60-40.

15 THE COURT: Excuse me, he was -- if I may
16 interject, what Mr. Nowacki was referring to is you
17 advocated or suggested earlier in the argument, that
18 the consideration for your client taking that 40
19 percent was this arrangement of the 65-35. That's
20 what he was referring to.

21 ATTY. COLLINS: Well what I'm -- that is a true
22 statement Your Honor. The 65-35 is not in and of
23 itself; it was not done in a vacuum.

24 THE COURT: No, I understand.

25 ATTY. COLLINS: Right.

26 THE COURT: But that's what he's answering your
27 question that the 60-40 he's answering -- Is that

1 fair?

2 ATTY. COLLINS: Well there's no 60-40 -- the 60-
3 40 is on the asset distribution.

4 THE COURT: Well that's what he's talking about.

5 THE WITNESS: That's right. But just you just
6 said that it related to income. And that's an
7 incorrect statement.

8 ATTY. COLLINS: No, I didn't say that.

9 THE WITNESS: Yes, you did.

10 THE COURT: Well, then rephrase the question.

11 Because maybe we both --

12 BY ATTY. COLLINS:

13 Q Why was the asset distribution 60-40?

14 THE COURT: Okay.

15 A Well, okay. I'll take you through exactly why --

16 THE COURT: Can I do it in 30 seconds? Three
17 reasons:

18 One: he brought \$188,000 to the marriage and,

19 Two: he's got 2 kids to support and he gave up
20 the cap to pay \$200,000 more -- his percentage of it
21 than he would have otherwise.

22 THE WITNESS: Right. The asset distribution
23 was --

24 THE COURT: That was the answer.

25 THE WITNESS: You know --

26 THE COURT: That was your answer?

27 THE WITNESS: And in addition to that also

1 motivating the situation was the additional cost of
2 litigating the matter if we move forward. That was
3 part of the --

4 THE COURT: Okay.

5 THE WITNESS: -- rational for why we ended up
6 where we ended up --

7 THE COURT: Okay.

8 THE WITNESS: -- was there was going to be less
9 to split up.

10 THE COURT: I hear you. Did you hear that Mr.
11 Collins?

12 ATTY. COLLINS: I did, Your Honor.

13 THE WITNESS: If we continued to battle it out.

14 THE COURT: Okay.

15 THE WITNESS: And the kids would then end up
16 with a cap. And that was not in their best
17 interest.

18 THE COURT: All right.

19 THE WITNESS: It had to do with best interest of
20 the children.

21 BY ATTY. COLLINS:

22 Q Did Ms. --

23 A that was my motivation, sir.

24 Q Did --

25 A Best interests of the children.

26 Q And it remains your interest, right?

27 A Excuse me.

1 Q And that remains your motive.

2 A The best interests of the children?

3 Q Yes.

4 A Absolutely.

5 Q And how are they served by you modifying your
6 obligation? How is their best interests served by you
7 modifying your obligation?

8 A Their best interests are served so that both parents
9 have the ability to be able to do extra things in proportion
10 to their incomes.

11 Q And what extra things do you refer to, sir?

12 A Uh, vacations. Trips to athletic events, activities
13 that are more affordable based on the proportionality of --
14 that's currently not working because of the changes of
15 income and the change of the economy.

16 There's lots of things, you know, home improvements that
17 benefit the children with regards to their activities at
18 home. You know, I'd like to put in a bigger ice rink for
19 our kids during the winter time. All right.

20 There's lots of things that relate to -- just like how we
21 change the cell phone bill, resulted in Kerry getting a --
22 an Apple computer.

23 All of those things relate to not things that are good
24 for me, but good for the kids.

25 Q Okay.

26 A They're going to have cars.

27 Q So you're saying --

1 A That are not part of the agreement. So we've got a
2 car situation then. So that financial picture on something
3 that's not covered in the agreement gets modified based upon
4 the change in the allocation of expenses because there're
5 certain things that are not in the agreement.

6 Maybe there's a semester abroad that then becomes more
7 affordable under this kind of circumstance. I cannot
8 predict the future about all the good things that are going
9 to happen as a result of this modification, sir.

10 Can't predict 'em. But I know there's a bunch of them.

11 Q Okay.

12 A Thank you.

13 Q At the time of the dissolution you listed on your
14 financial affidavit \$2,688,000 in assets; is that correct?

15 A Excuse me. The period of time you're looking --

16 Q Two million --

17 A What time?

18 Q The time of the dissolution, 6-23-05.

19 A Of my assets?

20 Q Yes, sir. On your financial affidavit.

21 A Oh, I gotta go back that -- I don't remember that far
22 back, Mr. Collins. But I got one here.

23 And you're looking at which financial affidavit?

24 Q The one done at the time of the dissolution, June 23,
25 '05.

26 A Okay. I've got to go find that one. You got a copy?

27 Q Yep.

1 I said \$2,688,000 in assets.

2 A Umm. That looks like a -- an error. This is not a
3 signed --

4 Q Well sir, this is your affidavit.

5 A This is not -- You know what? This is not a signed
6 financial affidavit, so --

7 Q Okay, fine. Let's get the Court file.

8 A Okay. It's not a signed financial affidavit.

9 Q Fine. Okay. We'll see if your lawyer gave an
10 incorrect affidavit to Mr. Colin.

11 THE COURT: Here, let me see now. I have a copy
12 but it's a photocopy.

13 ATTY. COLLINS: Thank you, Your Honor.

14 THE COURT: And give it back to me.

15 ATTY. COLLINS: Yes, sir.

16 Q You're right. It's not \$2,688,000; it's \$2,690,000.
17 It's actually two grand more. Did you sign that document,
18 sir?

19 A Hang on a sec.

20 Q Did you sign it? You asked for a copy; you got the
21 one right from the court file.

22 THE COURT: He was going to say horse's mouth.

23 ATTY. COLLINS: I was, but I didn't want to get
24 fined.

25 THE COURT: Thank you. So I guess the answer is
26 what, yes?

27 THE WITNESS: Well I'm looking at a document

1 that was dated in the near vicinity of that and to
2 see how it was --

3 ATTY. COLLINS: Well, Your Honor, I don't know
4 how relevant that can be since the Court relied upon
5 the affidavit of Mr. Nowacki and that's what's in
6 the file and that's what was agreed upon.

7 THE COURT: The Court could take judicial notice
8 of it. It's in the file --

9 ATTY. COLLINS: Right.

10 THE COURT: And that was it says.

11 ATTY. COLLINS: So all I'm looking for is an
12 answer that he had \$2,690,000 in assets as of his
13 financial affidavit on June 23, 2008.

14 THE COURT: That's an asked question.

15 THE WITNESS: I'll take a look.

16 BY ATTY. COLLINS:

17 Q Sir, my question is do you know -- does that number
18 reflect the asset distribution of \$450,000 that you made to
19 Ms. Nowacki at the time pursuant to the separation
20 agreement? In other words, is that number net of that
21 number?

22 A Uh -- that's a confusing question.

23 Q Really? What's confusing about it, and I'll clarify
24 it for you.

25 A What's confusing was --

26 Q Yeah.

27 A The form of the question that didn't make any sense

1 to me.

2 Q Really? Well --

3 THE COURT: Well, what he's asking you sir, is
4 that before or after you agreed to pay the \$450,000
5 to your wife: that's the question.

6 THE WITNESS: I have to find the statement to be
7 able to answer the question.

8 Q I'm sorry?

9 A I need to find the statement in my files in order to
10 be able to answer the question. And I'm looking for it
11 right now.

12 What I'm doing is I'm looking for the document that was
13 the summary of the asset distribution that was dated -- that
14 was in the Court file. I believe that there's an exhibit
15 that exists that was accepted into the Court file that was a
16 listing of the assets.

17 THE COURT: The asset distribution after.

18 THE WITNESS: No, it was a -- at the point in
19 time that we filed the financial affidavit about
20 what the statement was. And I believe that it was
21 in the court record as an exhibit.

22 But that's -- that would be the reference point.

23 THE CLERK: Are you referring to the document
24 that was -- marital income properties; is that what
25 you're talking about it?

26 THE WITNESS: No. It was sort of a -- a
27 spreadsheet.

1 THE COURT: You don't mean during this hearing,
2 you mean at the time that --

3 THE WITNESS: Yeah, at the time that we filed
4 the --

5 THE COURT: With the judgement.

6 THE WITNESS: Yeah, when -- when we signed the
7 judgement.

8 THE COURT: He's talking about June of '05, part
9 of the separation agreement. Is there something --

10 ATTY. COLLINS: Well the pending question is
11 whether or not the \$2.69 million dollars in assets
12 is net of the \$450,000 that he was to pay to Ms.
13 Nowacki, pursuant to section 2.1a of the property
14 settlement.

15 THE COURT: I understand the question. He wants
16 to --- the check to answer this question.

17 (Pause)

18 THE WITNESS: I believe that financial affidavit
19 was our combined assets, by the way. I don't think
20 that they were my personal assets.

21 BY ATTY. COLLINS:

22 Q You think that that included joint accounts?

23 A That's why I'm pausing. Is that -- that number
24 sounds to me like what the total assets were.

25 Q Well that's an important --

26 A Yeah. I know, absolutely.

27 Q Issue, so I suggest that we get the resolved.

1 A Yeah, I know.

2 I just found the spreadsheet so

3 This -- this asset sheet in regards to, husband -- and
4 again, you know, what I see here is that the total assets
5 that were declared on this sheet was \$3,179,000.

6 That the --

7 Q Sir, what do you refer?

8 A All right. That the fair market value of the house
9 was listed on this sheet at \$1,500,000 --

10 ATTY. COLLINS: I'm going to object. And I'll
11 tell you why. The affidavit is what the Court
12 relied upon.

13 Mr. Nowacki makes a lot of inferences about the
14 inaccuracies of the financial information and the
15 reliance of the Court on fraudulent affidavits.

16 THE WITNESS: Well --

17 ATTY. COLLINS: And here's the bottom line --

18 THE WITNESS: -- Mr. Collins --

19 ATTY. COLLINS: Here's the bottom line --

20 BY ATTY. COLLINS:

21 Q does your financial affidavit not state -- the one
22 that I was relied upon by the Court at the time of the
23 dissolution -- that you had \$2,690,000 with of assets or
24 equity?

25 A That was the combined marital asset, sir.

26 Q Okay so what do you think your -- so that's an
27 inaccurate statement for that to be on your financial

1 affidavit, is it not?

2 A No, because at that point in time we were still
3 married.

4 Q All right. So, let me ask you this --

5 A That's not inaccurate. Not at all.

6 Q How about this --

7 A We were still married.

8 Q How much of that \$2,690,00 was yours?

9 A You know what? The whole thing was ours.

10 Q Okay. So, how much out of that \$2,690,000 did Ms.
11 Nowacki get, then?

12 If that's the whole of the martial estate --

13 A All right. According to -- according to what my
14 notes --

15 Q No, no. You're testifying from a document not in
16 evidence.

17 My question is --

18 A Well, no. It is --

19 Q It's your testimony --

20 A It's not in evidence, it's an -- an exhibit, sir.

21 THE COURT: Let's not both talk at the same
22 time.

23 THE WITNESS: It's an exhibit.

24 THE COURT: One at a time. Let him finish the
25 question and then --

26 BY ATTY. COLLINS:

27 Q Is it in ID?

1 A Yes.

2 Q It's an ID.

3 A Well --

4 Q It was not admitted.

5 A Well, I understand that, but I'm trying to give you
6 the reference point that you're asking for about how the
7 marital assets were split.

8 Q This is gotta work the way I try my case now.

9 The point is, is on your financial affidavit in January
10 -- in June of 2005, you suggested on your financial
11 affidavit that you had total assets of \$2,690,000.

12 Isn't your testimony that that is or is not an accurate
13 representation of what your assets were at that time?

14 A Inaccurate. That is --

15 Q Inaccurate.

16 A -- A combined marital asset.

17 Q You're --

18 Is that an admission of perjury, sir?

19 A No, sir it isn't.

20 THE COURT: Wait a minute.

21 A What it is, is marital assets.

22 THE COURT: Keep your voice down. And keep your
23 voice down. Look, we're not --

24 THE WITNESS: They're marital assets.

25 THE COURT: Let's not --

26 BY ATTY. COLLINS:

27 Q So, all right. Even assuming that --

1 A That's not my financial affidavit; that's marital
2 assets at that point in time.

3 Q Assuming that to be true, sir, How much -- if that is
4 your answer, then what of those assets was yours?

5 THE COURT: Look, get off the --

6 THE WITNESS: It's ours, Kevin. Get off the
7 yours and --

8 THE COURT: Well, wait a minute.

9 THE WITNESS: -- we were married at the time.

10 THE COURT: Well, wait, wait. Wait a minute.

11 THE WITNESS: My financial affidavit reflected
12 the marital assets.

13 THE COURT: Mr. Nowacki, let's not get excited.
14 Let's go through it.

15 I'll make it simple for you. And I really didn't
16 want to get involved, but we're never going to get
17 through unless I do.

18 Go to page 7 of your financial affidavit.
19 That's where your assets are listed. Okay?

20 THE WITNESS: Do I have a copy of that?

21 THE COURT: You don't have your financial
22 affidavit of the June --

23 THE WITNESS: Well I'm sure I do.

24 THE COURT: Well, all right.

25 THE WITNESS: Just let me put my hands on it.
26 Those are the marital assets.

27 THE COURT: It will be easier. . . .

1 Do you have a copy of that one? It's the June --

2 THE WITNESS: I'm sure I do, Your Honor.

3 THE COURT: Well I'm trying to have you follow
4 along with me, if you could.

5 THE WITNESS: No, I understand. I'm just
6 looking for the correct copy.

7 THE COURT: Was your residence at Lost District
8 Drive in joint names at the time of your divorce?

9 THE WITNESS: Yes, it sure was, Your Honor.

10 THE COURT: Okay.

11 THE WITNESS: As was virtually everything.

12 THE COURT: Mr. Collins I'm just intervening in
13 just trying to expedite this. I hope you understand.

14 ATTY. COLLINS: I do, Your Honor.

15 THE COURT: All right. If you don't, I'll just
16 shut up.

17 ATTY. COLLINS: No, Your Honor. Your Honor --

18 THE COURT: You said, I'd like to finish while
19 the kids are still minors.

20 ATTY. COLLINS: Yeah.

21 THE COURT: Okay. Can we help you? Get you a
22 copy of it or something?

23 THE WITNESS: Yeah, sure. I would love a copy of
24 it.

25 THE COURT: Is somebody --

26 THE WITNESS: I don't know why I don't -- why I
27 can't find --

1 THE COURT: Why don't you give him the original
2 financial affidavit of June of '05?

3 ATTY. COLLINS: I gave it back to the Court.

4 THE WITNESS: You know, I have stuff out in my
5 car, and I suspect it's --

6 THE COURT: That's all right. If you don't --
7 let me just read it.

8 THE WITNESS: All right.

9 THE COURT: And I'll do it the harder way.
10 You list under real estate the residence. And
11 it's in joint names. So you didn't put half of the
12 value you put 100 percent of the value. Okay?

13 THE WITNESS: Right.

14 THE COURT: All right. On the bank accounts,
15 you listed some joint accounts, but you took half of
16 that is yours.

17 It's a small amount but that's what it was.

18 THE WITNESS: That's correct.

19 THE COURT: All right. Then you had a Citibank
20 checking account in your own name. And you added
21 that.

22 THE WITNESS: Correct.

23 THE COURT: Then you listed the motor vehicles
24 that were yours; the 2001, I guess, the 2000 Ford,
25 less the loan.

26 THE WITNESS: Right.

27 THE COURT: And then equity, you didn't put

1 anything down, because the loan equaled or exceeded
2 the equity.

3 THE WITNESS: Right.

4 THE COURT: Business ownership none. Okay.

5 Now, securities and bonds, you had joint
6 accounts at Neuberger with a margin account and you
7 took half of that.

8 THE WITNESS: That's -- that's correct. Because
9 that was held jointly.

10 THE COURT: Yes, exactly. But that's what he's
11 asking you. He's asking you if what you've listed
12 here, were your assets or joint assets.

13 THE WITNESS: And they were joint assets.

14 THE COURT: The point is when you got to the two
15 million dollar figure he's talking about for
16 securities and bonds you only put half in. That's
17 what he's saying. Okay.

18 You see the way we're going to get to -- I
19 assume is -- when we take your financial affidavit
20 and your former wife's affidavit, it will tell me
21 that she had \$3.3 million to divide up.

22 THE WITNESS: \$3,179,033.

23 THE COURT: That's my prediction, okay? Because
24 I analyzed it and that's the way it came out.

25 THE WITNESS: Right.

26 THE COURT: But I'm going to let you continue
27 Mr. Nowacki.

1 THE WITNESS: Actually it was three thousand --
2 \$3,229,000.

3 THE COURT: Whatever it is, it's 3 million-plus
4 that was on the table to be divided.

5 THE WITNESS: Right.

6 THE COURT: Is that the bottom line that you are
7 getting to?

8 ATTY. COLLINS: Well, not exactly but Your Honor
9 will see.

10 THE COURT: All right then. You'll take over.

11 ATTY. COLLINS: I mean, what I'm interested in
12 is --

13 THE COURT: I'll keep quiet.

14 ATTY. COLLINS: If that financial affidavit as
15 of June 23, 2005 reflects \$2,690,000 --

16 THE COURT: That's what it says.

17 ATTY. COLLINS: Right.

18 THE WITNESS: But that includes joint assets.

19 THE COURT: We understand that. I even
20 understand that.

21 THE WITNESS: Okay. Thank you.

22 THE COURT: Next question.

23 BY ATTY. COLLINS:

24 Q The question I have is, how much of that then, did
25 you get?

26 THE COURT: That's the next question.

27 Q Right.

1 A According to the numbers that are on this sheet, the
2 number that is recorded here is \$1,767,979, versus \$1,474 --

3 THE COURT: You don't mean one thousand.

4 A I mean \$1,474,259.

5 Q I'm sorry. One million. . . ?

6 A 474,259. That made the split 54-45.

7 THE COURT: Wait a minute now, you have to break
8 that down, because I've got a different
9 distribution.

10 THE WITNESS: Okay. All right. And again, I
11 don't have a date on this document so it's --
12 it's --

13 THE COURT: After the divorce as a result of
14 your settlement, itemize what you got; and the
15 values that --

16 THE WITNESS: Okay. Absolutely, Your Honor, I'd
17 be happy to do that for you.

18 THE COURT: Go ahead.

19 THE WITNESS: Um, okay. The -- the way that
20 this sheet was broken out was, husband, and then
21 joint.

22 THE COURT: Well, why don't you just do the
23 husband's category?

24 THE WITNESS: Okay.

25 THE COURT: Or do it the way you want to. I'm
26 just --

27 THE WITNESS: Right. I understand.

1 THE COURT: -- trying to get your number of 1.7,
2 because I've got more but I could have gotten it
3 wrong.

4 THE WITNESS: Okay. According to what is on
5 this sheet -- and again, this is not dated but it's
6 got to be pretty close to the number -- there was
7 \$4,000 in a -- in a checking account.

8 THE COURT: This is all in your column, now.

9 THE WITNESS: That's correct.

10 THE COURT: \$4,000 in a bank account.

11 THE WITNESS: Right.

12 THE COURT: Okay.

13 THE WITNESS: Okay. There were vested CBS
14 Viacom stock options which were on Schedule A, of
15 \$30,300 at the time.

16 THE COURT: \$30,300. Okay.

17 THE WITNESS: Right. And -- and what's
18 important to note about that is that, some of those
19 options went to go pay for attorney's fees, that are
20 -- that are not in the equation on the liability
21 side here at the point and time that this --

22 THE COURT: Well that's a different issue,
23 but --

24 THE WITNESS: Okay.

25 THE COURT: All right.

26 THE WITNESS: But the point is that those were
27 at that point in time, unrestricted options. All

1 right. They didn't have cash value. That was the
2 value based upon the price of CBS stock at that
3 point in time.

4 THE COURT: Was that was part of the agreement
5 that your wife agreed -- or after a certain date
6 then it belonged to you or --

7 THE WITNESS: No. Well, there were certain
8 options that were dated 2005 --

9 THE COURT: All right.

10 THE WITNESS: -- that were restricted shares
11 that were not part of the agreement that was part of
12 what was written into the agreement.

13 That that was an agreement made to say that
14 that's being excluded --

15 THE COURT: Yes. That's what I meant.

16 THE WITNESS: Right.

17 THE COURT: So go on from there. So --

18 THE WITNESS: So we have \$30,300 was the value
19 put there.

20 THE COURT: Yes.

21 THE WITNESS: There was a Morgan Stanley IRA
22 that was \$66,653 -- that by the way had lots of --
23 of Bear Sterns stock in it.

24 THE COURT: 653.

25 THE WITNESS: We had the CBS 401K, which had a
26 value of \$472,121.

27 THE COURT: Okay.

1 THE WITNESS: I had a Hartford life insurance
2 policy that had a cash value of \$1,520. A
3 Prudential life insurance policy with a \$791,000
4 face value that was \$58.13 with a cash value.

5 And a Lincoln Financial \$200,000 face policy
6 that had a cash value at that point in time, of
7 \$25,509.

8 At that point in time there was also a Standwich
9 Country Club bond that was owned prior to the
10 marriage, that had a value of \$3500.

11 So when you add all of those things up --

12 THE COURT: Yes.

13 THE WITNESS: -- that totaled \$1,066,601.

14 THE COURT: I don't think so. 066,601. You
15 forgot about the house. Didn't you put the house in
16 here?

17 THE WITNESS: Well no, that's then -- and then
18 when we talk about joint assets --

19 THE COURT: Oh, okay.

20 THE WITNESS: Okay. That's where the joint
21 assets come in.

22 THE COURT: Go ahead.

23 THE WITNESS: All right. That totals up to, you
24 know, the number in question, involved joint assets
25 that were shared at that point in time. They were
26 listed on my financial affidavit. Not as my
27 financial affidavit, but that's what was an asset

1 that was owned by both parties.

2 THE COURT: I understand. So the joint asset
3 list that you were going to give me --

4 THE WITNESS: Right.

5 THE COURT: -- represents a half of what they --

6 THE WITNESS: No, this represents the full
7 amount before it's split.

8 THE COURT: Of joint -- well we're talking about
9 after it's split. Isn't that the question? After
10 it's split.

11 THE WITNESS: All right. Well then we've got to
12 take these and -- and put them in half, I guess.

13 ATTY. COLLINS: Well, not necessarily. Because
14 they weren't split in half.

15 THE COURT: Well, go through them. Go ahead.
16 The house was not split in half. All right.

17 THE WITNESS: Right. But neither was the
18 brokerage account.

19 THE COURT: Well that's what I'm saying. So,
20 let's do it.

21 THE WITNESS: Okay. So, all right. So the
22 house again, would be \$1,231,314 was the number when
23 you subtracted out the mortgage balance at the time
24 and the home equity loan.

25 THE COURT: Yes. \$1,231,314.

26 THE WITNESS: That's correct.

27 THE COURT: So you --

1 THE WITNESS: And that's before you pay any, you
2 know, commissions or real estate taxes or whatever
3 else.

4 THE COURT: So you got that, less 450. Right?

5 THE WITNESS: Less 450.

6 THE COURT: What should we do; take 450 off of
7 that?

8 THE WITNESS: Yeah, I mean, I -- I don't know
9 where. But I guess, yeah, that would be the
10 process.

11 THE COURT: Check my arithmetic, but I think
12 it's 781,314 based on what you've just said.

13 THE WITNESS: Okay. Can I make a notation of
14 that --

15 THE COURT: Yes. Sure.

16 THE WITNESS: -- just so I'm following the
17 bouncing ball here.

18 THE COURT: Yes, do that.

19 THE WITNESS: 781,314.

20 THE COURT: Then add 450 to it, and you'll get
21 that number.

22 THE WITNESS: Right.

23 THE COURT: Okay.

24 THE WITNESS: And then we had various joint
25 accounts.

26 THE COURT: Right.

27 THE WITNESS: Which were -- you know, and one of

1 the accounts here was to use to pay down the Lexus
2 lease of 450.

3 THE COURT: How did you divide it? How you
4 spent it later is a different issue.

5 THE WITNESS: Well, what we did is, is that we
6 agreed that that would not be separated out. That
7 that would go to pay for the -- the lease that
8 existed on the car at that point in time.

9 So it actually went to neither one of us.

10 THE COURT: Okay.

11 THE WITNESS: It went to --

12 THE COURT: So take it off the table.

13 THE WITNESS: Yeah.

14 THE COURT: All right. Go ahead.

15 THE WITNESS: That number came off the table.

16 THE COURT: Go ahead.

17 THE WITNESS: Then there was a checking account
18 1-2 that ended in 941 that was 1257.14.

19 THE COURT: \$1257 you mean?

20 THE WITNESS: Yeah, and 14 cents. That was
21 split, half and half.

22 THE COURT: So that would be six --

23 THE WITNESS: 628.57.

24 THE COURT: Wait a minute. 628.57.

25 THE WITNESS: Right. And then it was 698.50 on
26 another checking account, split half and half.

27 THE COURT: Wait a minute.

1 THE WITNESS: So it's 1397 split two ways.

2 THE COURT: So what's the second split? What
3 was the second number?

4 THE WITNESS: Uh, was 698.50 for each part.

5 THE COURT: Each?

6 THE WITNESS: Yeah.

7 THE COURT: 698.50.

8 THE WITNESS: Okay. The net equity in the
9 Neuberger account at that point in time was \$657,481
10 that all went to Suzanne.

11 THE COURT: Will you say that number again?

12 THE WITNESS: 657 --

13 THE COURT: Right.

14 THE WITNESS: -- 481.

15 THE COURT: Okay.

16 THE WITNESS: That was when the account was
17 valued, which may not have been the final value at
18 the point and time of the dissolution, that had a
19 value of 785,361 and a margin account of 127,880 is
20 what I have here.

21 THE COURT: Okay.

22 THE WITNESS: Again, this -- this may be
23 slightly out of date from the final numbers but --

24 THE COURT: Yes, all right.

25 THE WITNESS: -- somewhere in the near vicinity.
26 So that all went to Suzanne.

27 THE COURT: Right.

1 THE WITNESS: Then there was a Fidelity -- I'm
2 sorry. There was a Fidelity IRA that I, -- I --
3 that has a value of \$395 that was all to me.

4 THE COURT: It was what?

5 THE WITNESS: That was all --

6 THE COURT: \$395.

7 THE WITNESS: Yeah. \$395. Yeah.

8 THE COURT: All right. Fine.

9 THE WITNESS: Okay. And then there was -- then
10 there was the Fox 401K plan that was all Suzanne's.

11 THE COURT: Would you tell us how much that was?

12 THE WITNESS: \$6,860.

13 A Neuberger IRA that had a value of \$37,369.

14 THE COURT: Who got that?

15 THE WITNESS: That all went to Suzanne.

16 THE COURT: 37,369.

17 THE WITNESS: Right.

18 THE COURT: Okay.

19 THE WITNESS: And then there's a -- another
20 Neuberger account here, which I don't -- I don't see
21 listed here, but is it on the financial affidavit?
22 That's on her financial affidavit.

23 There was another Neuberger account that was
24 invested in something called the Guardian Fund.

25 THE COURT: Yes, Neuberger account was \$93,282.

26 THE WITNESS: Right.

27 THE COURT: She got that?

1 THE WITNESS: Yes.

2 THE COURT: 93,282.

3 THE WITNESS: Right.

4 THE COURT: All right.

5 THE WITNESS: And then at the point and time of
6 the -- of that June, there was also a you know,
7 \$56,000 in a checking account, that was the
8 remaining proceeds that came from the inheritance.

9 THE COURT: So what did you do with that?

10 THE WITNESS: That all went to Suzanne.

11 THE COURT: \$56,000.

12 THE WITNESS: Is that correct?

13 THE COURT: Well, we'll find out.

14 THE WITNESS: All right. Well, I -- I'm just
15 saying, I need to find the financial affidavit.

16 THE COURT: Mr. Collins, are you listening?

17 ATTY. COLLINS: I'm listening, Your Honor, yes.

18 THE COURT: He asked the -- he doesn't know the
19 \$56,000 that's going --

20 ATTY. COLLINS: That's part of that \$132,000
21 that he had made so much about that -- from
22 Grandma's estate.

23 THE COURT: Oh, okay. So it went in your
24 account.

25 THE WITNESS: That was the wire transfer.

26 ATTY. COLLINS: It didn't go in mine; Mr. Colin.

27 THE COURT: What?

1 ATTY. COLLINS: Did you say my account?

2 THE COURT: No, her account.

3 ATTY. COLLINS: Oh, yeah. Yeah.

4 THE COURT: That's what I meant.

5 ATTY. COLLINS: Right.

6 THE COURT: Okay. So \$56,000. Anything else?

7 THE WITNESS: You know there was values of the
8 automobile because she took the Derango, and I ended
9 up with the Grand Cherokee at the time.

10 Well -- oh, that's right. I had traded that in.
11 So that was a debt at that point in time.

12 THE COURT: But those are basically -- is there
13 a bottom-line total to all these numbers that you
14 just told me?

15 THE WITNESS: I - I don't have that number. Uh,
16 but I -- I assume it comes pretty close to backing
17 into the --

18 THE COURT: Well, let me just see what your
19 testimony was; because you gave me a number a little
20 while ago. After -- it's your opinion that after
21 the judgment was implemented you ended up with what?

22 THE WITNESS: Well, the number that -- you know,
23 I -- the -- the claim was 60-40.

24 THE COURT: Yes, I understand.

25 THE WITNESS: I don't know where -- yeah. I
26 don't know where that came from.

27 THE COURT: No, you gave me numbers a little

1 while ago.

2 THE WITNESS: Right.

3 THE COURT: One-something -- and you wife got
4 140.

5 THE WITNESS: Yeah, but that's a number that's -
6 - I can see has some missing information on it. So
7 I would not -- I'd like to retract that number
8 because that's not correct.

9 THE COURT: Okay. So, you're not sure.

10 THE WITNESS: Yeah. Yeah, that number is not
11 correct.

12 THE COURT: All right.

13 THE WITNESS: And that doesn't also deal with
14 any liabilities that exist at that point and time.

15 ATTY. COLLINS: First of all, they're netted out
16 of real property, and they are listed as separate
17 liabilities.

18 THE COURT: Yes, I understand.

19 THE WITNESS: Well, but there were counsel fees
20 and other kinds of things that were not --

21 THE COURT: Well, everybody has to pay those;
22 both sides had to pay those, I assume.

23 THE WITNESS: Yeah, we each paid our own. But
24 I'm just saying is that out of the -- the proceeds
25 then, you know, the -- for instance the \$25,000 that
26 was in the Prudential face value, went to go pay my
27 attorney.

1 THE COURT: I understand.

2 THE WITNESS: Okay. So I had to take that cash
3 value out of the policy. So that really doesn't
4 become an asset at the point in time that I handed
5 over the 450.

6 THE COURT: All right. Well, okay. Okay.

7 THE WITNESS: It didn't exist at that point and
8 time.

9 THE COURT: Do you want to continue the
10 questioning along those lines?

11 ATTY. COLLINS: Yes, Your Honor. Please.

12 BY ATTY. COLLINS:

13 Q So Mr. Nowacki, if the \$2,690,000 is -- is it your
14 testimony, sir, that that number as reflected on your
15 financial affidavit is a marital estate in its entirety?

16 A No. It's -- it's a combination of those items that
17 were separately held in -- on Suzanne's financial affidavit
18 combined with mine, which valued the same real estate. It
19 says right here, um, you know, that all of that was put into
20 my financial affidavit just for points of reference.

21 Q Well, here's --

22 A It wasn't split up at this point in time.

23 Q Did I understand your testimony correctly that you
24 said that you received in assets in equity \$1,167,000?

25 A And I just corrected that to say that based upon the
26 sheet that I'm looking at right now, that isn't -- that was
27 an inaccurate number that I gave because I see that there

1 were certain assets that were not in those numbers.

2 Q So how much did you get?

3 A I gotta add it up.

4 Q Go ahead.

5 Did you get more or less than that number?

6 A I don't have an idea. I'm not -- I'm not gonna
7 speculate.

8 THE COURT: Well, it's got to be more, because
9 you said it didn't include some that weren't in
10 those numbers.

11 ATTY. COLLINS: And what isn't --

12 THE WITNESS: No, some assets of Susanne's that
13 were not in that.

14 THE COURT: Yes. Well sure.

15 THE WITNESS: So therefore the percentage goes
16 down if -- if the total asset base went up.

17 BY ATTY. COLLINS:

18 Q All I really want to know is how much he got -- I was
19 working off the number now of \$1,767,000.

20 THE COURT: Wait a minute. When we --

21 THE WITNESS: Your Honor, what I would like to
22 suggest is we take a break and I'll go crunch some
23 numbers.

24 THE COURT: Yeah, I think you're going to have
25 to, but finish. We will. pretty soon.

26 THE WITNESS: Right.

27 THE COURT: Let's finish this.

1 ATTY. COLLINS: Well, I need to know that
2 number.

3 THE COURT: Yes. Then he has to get it.

4 THE WITNESS: Well, then I --

5 ATTY. COLLINS: Because I'm -- this is going
6 somewhere.

7 THE COURT: Well of course, I understand.

8 THE WITNESS: But --

9 THE COURT: All right. Let's do this: can we go
10 on for another 10 minutes or so, and then we'll
11 break for lunch at 20 after or something? And then
12 you'll have some time to get these numbers together.
13 Or do you want to stop now and let him get these
14 numbers?

15 THE WITNESS: Right.

16 ATTY. COLLINS: I prefer to stop now, because --

17 THE COURT: All right. Then we'll resume at
18 2:00?

19 ATTY. COLLINS: That's fine, Your Honor.

20 THE COURT: Let me just -- I'm not suggesting
21 that this is accurate. I got different numbers.
22 But I guess I'll wait until I hear what everybody
23 has to say.

24 Then you can help me figure out what I did
25 wrong. Okay?

26 ATTY. COLLINS: Well we can --

27 THE COURT: Because I have a much different

1 number.

2 ATTY. COLLINS: I mean, the number \$1,767,000 is
3 a number that I elicited from Mr. Nowacki's
4 testimony.

5 THE COURT: Well, yes. But he --

6 THE WITNESS: And I corrected that testimony.

7 THE COURT: Yeah.

8 ATTY. COLLINS: I understand that.

9 THE COURT: He doesn't want to be stuck with
10 that number.

11 THE WITNESS: Right.

12 ATTY. COLLINS: I'm just saying where I got the
13 number from.

14 THE COURT: Yes.

15 ATTY. COLLINS: He's saying he wants to amend
16 that number, that's fine.

17 THE COURT: Fine.

18 ATTY. COLLINS: But I don't know -- in order to
19 understand how he's going to amend it, I also need
20 him to show me what comprises that number.

21 THE COURT: Well, absolutely.

22 THE WITNESS: I'll be happy to.

23 THE COURT: Yes, of course. You'll have to.

24 THE WITNESS: Yeah.

25 THE COURT: We'll take a break now --

26 THE WITNESS: I'll be happy to do that during
27 lunchtime.

1 ATTY. COLLINS: Thank you, Your Honor.

2 THE COURT: We'll come back at 2:00. And do
3 your arithmetic.

4 THE WITNESS: Yeah.

5 THE COURT: Well see you all at 2:00.

6 ATTY. COLLINS: Thank you, Your Honor.

7 THE WITNESS: Okay. And if I can, you know, I
8 don't know where I can get a Xerox machine somewhere
9 in the area.

10 THE COURT: In the library.

11 ATTY. COLLINS: Fourth floor library.

12 THE WITNESS: Fourth floor? Okay. Then I'll
13 make copies for everybody.

14 THE COURT: You can step down if you like.

15 THE WITNESS: And I'll make copies for
16 everybody.

17 THE COURT: You folks can go to lunch, I want to
18 stay here a couple minutes more.

19 ATTY. COLLINS: Your Honor, may I request a copy
20 of my client's financial affidavit as of the date of
21 dissolution? Can I get a copy of that by any
22 chance?

23 THE COURT: Sure.

24 ATTY. COLLINS: Okay. Because I would love
25 that. I don't seem to have that.

26 THE COURT: Yeah. By all means you can have
27 that.

1 ATTY. COLLINS: Thank you, Your Honor.

2 THE WITNESS: And I'll bring the rest of my
3 documentation that out in the car.

4 THE COURT: Yes.

5 THE WITNESS: -- because that's why I was --

6 THE COURT: Yes. That's fine.

7 THE WITNESS: That why -- some of what I'm
8 looking for is there.

9 THE COURT: That's fine.

10 THE WITNESS: I didn't realize we were going to
11 have --

12 THE COURT: No problem. It's okay.

13 THE WITNESS: Shall I make a copy down the
14 Library?

15 THE CLERK: Okay.

16 THE WITNESS: I'll bring it right back. Thank
17 you. Will you be here, or should I bring it back
18 after the lunch break?

19 THE COURT: Well he's coming right back, so you
20 can wait 2 minutes.

21 THE CLERK: Okay.

22 THE WITNESS: I'll be right back.

23 THE COURT: It's only 10 after 12.

24 (A recess was taken.)

25 THE COURT: Come on back up here.

26 I guess you're now prepared to answer what was
27 the amounts of each item in the distribution after

1 the --

2 THE WITNESS: And I -- and I did find in my
3 materials out in the car, Your Honor, a updated --
4 as of 5-31 for the statements for the various
5 accounts that we ran through previously.

6 THE COURT: The updated 5 --

7 THE WITNESS: In other words on -- on May 31st,
8 2005.

9 THE COURT: Right.

10 THE WITNESS: The numbers that I was working
11 with before did not have a date on them.

12 THE COURT: Okay.

13 THE WITNESS: So the numbers that I am going to
14 give you now --

15 THE COURT: Have a date.

16 THE WITNESS: Have a date of 5-31 as a reference
17 point. So, that changes some of the numbers that we
18 went through.

19 THE COURT: Well 5-31 though, it was done --
20 that was before the dissolution was entered.

21 THE WITNESS: Correct. But that was the -- that
22 was the last monthly set of statements that were
23 available.

24 THE COURT: Well those were the numbers --

25 THE WITNESS: -- before we signed the separation
26 agreement.

27 THE COURT: Those were the numbers that were

1 used to -- the distribution was based on those
2 numbers.

3 THE WITNESS: That's correct.

4 THE COURT: All right.

5 THE WITNESS: That would have been the last
6 monthly statement that could have been used.

7 THE COURT: All right. Go ahead.

8 THE WITNESS: So. . . .

9 THE COURT: Did you hear that Mr. --

10 ATTY. COLLINS: I did, Your Honor. Thank you.

11 THE COURT: All right.

12 BY ATTY. COLLINS:

13 Q So, Mr. Nowacki, you've handed me some documentation
14 of your -- with some handwritten columns.

15 At the end of the day, what is the total of the assets?
16 I assume that the purpose of this document is to show me the
17 total value of the assets and equity that you took as a
18 result of the dissolution asset distribution, correct?

19 A Correct. And I did not add them up for a reason.

20 Q Okay.

21 A Because we may agree or disagree about what these
22 numbers are. So therefore, I didn't want to be presumptuous
23 to say that each and every one of these things are an agreed
24 upon number. But it was basically pulled off of the
25 financial affidavits, to the best of our -- my ability. And
26 then there's also estimates on personal property here, that
27 doesn't involve any sort of a appraisal that was done.

1 But it was an estimate of -- on the original cost of the
2 goods that were then part of the personal property that
3 becomes part of -- I guess -- what can be considered to be
4 the total.

5 So I didn't -- I didn't total it.

6 Q Okay.

7 A To answer your question.

8 Q Did you total them, other than here; I mean, did you
9 write it on a notepad somewhere?

10 A No.

11 Q All right. That's kind of what I was hoping to get.

12 A Well but you know what, until we agree to what those
13 things are --

14 THE COURT: Well, why don't you tell us what you
15 include.

16 THE WITNESS: I'd be happy to.

17 THE COURT: From what I understand that you're
18 saying is --

19 THE WITNESS: Right.

20 THE COURT: That based on 5-31-05 numbers on the
21 affidavit, you've got the following.

22 THE WITNESS: Correct.

23 THE COURT: So you should tell us that.

24 THE WITNESS: Okay.

25 THE COURT: However you didn't do a total, and
26 that's what Mr. Collins asked you for. But give us
27 the itemized, and --

1 THE WITNESS: Okay.

2 THE COURT: -- we'll figure it out.

3 THE WITNESS: All right.

4 Marital home 781,314 --

5 THE COURT: Wait a minute. I want to write this
6 down so -- 781 --

7 THE WITNESS: 314.

8 THE COURT: Okay.

9 THE WITNESS: For MJN.

10 THE COURT: Right.

11 THE WITNESS: And SS/SSN at that point in time
12 was 450.

13 THE COURT: Well, okay. That's good. Go ahead.

14 THE WITNESS: All right. The joint Neuberger
15 statement dated 5-31 had a value of, and this
16 excludes the marginable amount, 697,814.

17 THE COURT: Why would you exclude the marginal
18 amount?

19 THE WITNESS: Well, because the -- there was a
20 margin on there that was a debt.

21 THE COURT: Yes, but did you --

22 THE WITNESS: So, I subtracted the debt out.

23 THE COURT: Oh, yes.

24 THE WITNESS: And that's the net amount.

25 THE COURT: You didn't say that. You said not
26 including the marginal account. That's what I
27 heard.

1 THE WITNESS: Okay.

2 THE COURT: So I --

3 ATTY. COLLINS: Yeah, what he said, that's a net
4 number which it's the right --

5 THE WITNESS: That's a net number.

6 THE COURT: Is that way he said?

7 ATTY. COLLINS: He did it correctly. He did.

8 THE COURT: Okay. I didn't hear that.

9 THE WITNESS: The net number. I'm sorry.

10 THE COURT: No, don't be sorry. I'm sorry
11 because I misheard you.

12 THE WITNESS: Yeah. Okay.

13 THE COURT: So what's a net number on the
14 Neuberger?

15 THE WITNESS: 697 --

16 THE COURT: Is that your share or hers?

17 THE WITNESS: 814. It all goes to Suzanne.

18 THE COURT: All right. Let me write -- so
19 you've got to tell me that in advance. 697 --

20 THE WITNESS: 697,814. All to Suzanne.

21 THE COURT: All right.

22 THE WITNESS: All right. Then all to Suzanne,
23 again, a Neuberger sole account --

24 THE COURT: Right.

25 THE WITNESS: And this comes off the financial
26 affidavit --

27 THE COURT: Right.

1 THE WITNESS: -- of June 14th ; 95,262.

2 THE COURT: 95 thousand. Okay. Go ahead.

3 THE WITNESS: The Neuberger IRA, again, solely
4 Suzanne's.

5 THE COURT: And that's how much?

6 THE WITNESS: 40,643.

7 THE COURT: All right. 40,643 okay.

8 THE WITNESS: Morgan Stanley IRA: 66,633.

9 THE COURT: To whom?

10 THE WITNESS: To MJN, I'm sorry.

11 THE COURT: So that's you?

12 THE WITNESS: That's correct.

13 THE COURT: 66 -- how much?

14 THE WITNESS: Uh -- 633.

15 THE COURT: 66,633. Okay.

16 THE WITNESS: Again to Michael Nowacki.

17 THE COURT: Yes.

18 THE WITNESS: CBS 401K: 472,121.

19 THE COURT: 472,121. Okay.

20 THE WITNESS: Right. Then there was a pension
21 Surp statement that was not on the financial
22 affidavit that was handed in on June the 23rd that
23 I'm adding in here.

24 THE COURT: All right.

25 THE WITNESS: To be completely up to date and
26 accurate of 2 --

27 THE COURT: This is for you?

1 THE WITNESS: Yes, this is MJN.

2 THE COURT: Go ahead.

3 THE WITNESS: Of \$2,900 was the lump sum as of
4 that date.

5 THE COURT: Okay.

6 THE WITNESS: All right. Then we have cash
7 value life insurance -- all of these are Mike
8 Nowacki.

9 THE COURT: Did you combine the three of them,
10 or you've got them separately?

11 THE WITNESS: I counted them separately just for
12 line item veto --

13 THE COURT: That's all right. Go ahead.

14 THE WITNESS: Line item veto purposes.

15 THE COURT: Do them separately.

16 THE WITNESS: 1,520 on a Hartford policy.

17 THE COURT: Yes.

18 THE WITNESS: A Prudential policy of \$58.

19 THE COURT: Yes.

20 THE WITNESS: And a Lincoln of \$25,500.

21 THE COURT: Okay.

22 THE WITNESS: Again, to Michael Nowacki,
23 Standwich Bond, \$3,500.

24 THE COURT: Okay.

25 THE WITNESS: Then for Suzanne Nowacki at that
26 point in time, security deposit on the apartment that
27 she was living on, \$4500.

1 THE COURT: One second. \$4500. Okay, thank
2 you. Go ahead.

3 THE WITNESS: There was a hand-written tax
4 refund estimate of \$11,000.

5 THE COURT: Who got that?

6 THE WITNESS: Suzanne.

7 THE COURT: 11,000.

8 THE WITNESS: Um-hmm.

9 THE COURT: Okay.

10 THE WITNESS: And the value of the Fox 401K as
11 of 5-31, again to Suzanne, would be 16,835.

12 THE COURT: 16,835. Okay.

13 THE WITNESS: Right. Then we go into a series
14 of personal property items. Dodge Derango of 6,000.

15 THE COURT: That goes to

16 THE WITNESS: To Suzanne.

17 Then I have a notation in here for replacement
18 furniture; meaning after Suzanne moved out in January
19 of 2005, she moved into a condo that she was renting.

20 So therefore each of us had to replace certain
21 items: new bedroom furniture for me. Stuff for the
22 kids for Suzanne. And again, I just put down an
23 equivalent amount, that's not a verified number, of
24 12,000 a piece.

25 I know mine was 12,000. I put in a similar
26 amount for her because she needed to buy new bedroom
27 furniture for the kids.

1 THE COURT: So replacement furniture was \$24,000
2 that you guestimated was worth the furniture that you
3 had to replace.

4 THE WITNESS: Yeah, because it was brand new, at
5 that point in time.

6 THE COURT: So 12 each.

7 THE WITNESS: Yeah. I put down a number as 12
8 each.

9 THE COURT: Okay. Now these numbers that you
10 put down, are you telling me that these are the
11 numbers that you both agreed upon at the time?

12 THE WITNESS: Well, we have no agreement on this
13 issue of the replacement furniture cost.

14 THE COURT: Okay. Except for that one.

15 THE WITNESS: Yeah. But everything else is
16 either in the financial affidavit.

17 THE COURT: Yes, okay.

18 THE WITNESS: In one or the other.

19 THE COURT: All right. Go on.

20 THE WITNESS: Okay. Jewelry mink coat again, to
21 Suzanne Sullivan would be \$25,000.

22 THE COURT: And how was that number arrived at;
23 was that from her affidavit?

24 THE WITNESS: That was from her affidavit.

25 THE COURT: All right.

26 THE WITNESS: Silver, I split it down the
27 middle, because we took the silver and split it two

1 ways. So I put \$2700 a piece for silver.

2 There was art, which was on her financial
3 affidavit, valued at \$10,000; I split that 5,000 and
4 5,000.

5 THE COURT: When you said you did, was that by
6 agreement?

7 THE WITNESS: No. It -- it just -- it's \$10,000
8 listed on her financial affidavit.

9 THE COURT: Okay.

10 THE WITNESS: As part of the preparation for
11 this discussion.

12 THE COURT: Okay.

13 THE WITNESS: I split it down the middle.

14 THE COURT: It's okay.

15 THE WITNESS: Okay. Yeah --

16 THE COURT: I just didn't understand how you did
17 it.

18 THE WITNESS: -- reasonable.

19 THE COURT: Go ahead.

20 THE WITNESS: All right. And then same thing on
21 the furnishings; you know, we agreed that there was a
22 fair split on the furnishings. I went back and I
23 figured out what the original costs of the
24 furnishings were. And that's what I listed here as
25 the total, and I split it for each person, \$56,250.

26 THE COURT: Fifty six --?

27 THE WITNESS: 250.

1 THE COURT: Now, wait a minute.

2 THE WITNESS: And was that by agreement? No,
3 that's not by agreement.

4 THE COURT: No, but how does that tie in with
5 replacement furniture?

6 THE WITNESS: Okay. Well, you have to
7 understand that when Suzanne moved out, she moved
8 some stuff out. But then she bought new things. And
9 the things that she took with her, like all the
10 bedroom furniture, I had to replace.

11 So the cost of my new stuff was 12. And I
12 estimated her -- that she had a parallel cost.

13 THE COURT: All right.

14 THE WITNESS: I don't know that to be true or
15 false.

16 THE COURT: Okay. Go ahead.

17 THE WITNESS: But that's what I'm saying.
18 That's why I didn't total this. Since counselor may
19 have an objection to --

20 THE COURT: That's okay.

21 THE WITNESS: -- the conclusion of some the --

22 THE COURT: Is that your total list?

23 THE WITNESS: No. There's -- there's a couple
24 big items left.

25 THE COURT: Go ahead.

26 THE WITNESS: Then the sole checking accounts --

27 THE COURT: Checking accounts.

1 THE WITNESS: Right? Mine was listed as \$4,000,
2 and on the financial affidavit for Suzanne was
3 51,694.

4 THE COURT: 51,694?

5 THE WITNESS: Right. And that's the number
6 that's picked up her June 14th, financial affidavit.
7 And then we had one Citibank account that had money
8 in it, that again, was going to pay for the lease in
9 the car. It was \$335 allocated to me, and 160 to
10 Suzanne.

11 THE COURT: 335 and 160.

12 THE WITNESS: And 160.

13 THE COURT: Okay.

14 THE WITNESS: And I actually found an e-mail
15 dated June the 30th that validated that in my
16 records.

17 THE COURT: Does that complete the list?

18 THE WITNESS: And that completes everything,
19 Your Honor.

20 THE COURT: All right. Can we take two minutes
21 off and do a rough addition?

22 ATTY. COLLINS: Yes, Your Honor.

23 THE COURT: I'll do it --

24 ATTY. COLLINS: I've done a rough addition.

25 THE COURT: Well, let me try it and we'll see
26 how close we are.

27 ATTY. COLLINS: Okay.

1 (Pause)

2 THE WITNESS: Your Honor, may I get a calculator
3 there?

4 THE COURT: Yes. Go ahead.

5 THE WITNESS: It's --

6 THE COURT: Sure, go ahead.

7 (Witness steps down and resumes.)

8 THE COURT: Have you folks done your arithmetic?

9 ATTY. COLLINS: Yes, Your Honor.

10 THE COURT: And you've done yours; or you
11 haven't done it?

12 THE WITNESS: You know, I'm going to trust that
13

14 THE COURT: All right. Well, I guess, let's
15 just compare to see how close we are.

16 ATTY. COLLINS: Under Mr. Nowacki's column I got
17 1,433,831.

18 THE COURT: I got 1,433,781. So that's pretty
19 close.

20 ATTY. COLLINS: Within 50 bucks.

21 THE COURT: What's the other one?

22 ATTY. COLLINS: The other one, under Suzanne's
23 column it's 1,462,858.

24 THE COURT: Wait a minute. 1,462,858?

25 ATTY. COLLINS: Yes, Your Honor.

26 THE COURT: Well I got -- and it's close enough
27 that we don't have to make an argument about it, but

1 I got 1,474,758.

2 ATTY. COLLINS: Actually, that's closer to what
3 my client got. So you and Ms. Sullivan are probably
4 better than I am on that column.

5 THE COURT: All right. So when you add 'em
6 together, assuming that arithmetic is correct, okay?

7 THE WITNESS: Um-hmm. It's a 50-50 deal.

8 THE COURT: Yes. 50-50. But it adds up to 2.9
9 million dollars, and I think the affidavits combined
10 add up to 3.3 million dollars.

11 ATTY. COLLINS: Well, Your Honor --

12 THE COURT: Where's my mistake.

13 ATTY. COLLINS: Here's what I'm looking at;
14 here's what I think the differential is from:

15 THE COURT: Yes.

16 ATTY. COLLINS: Mr. Nowacki on his financial
17 affidavit of June 23, 2005 has a current lump sum
18 value of his pension of 589,293.

19 THE COURT: On his pension?

20 THE WITNESS: You know what? That's because I
21 didn't update to that; and you're correct. Because
22 that -- that was a 531 update.

23 THE COURT: Just let him finish --

24 THE WITNESS: Right.

25 THE COURT: -- then you can explain.

26 THE WITNESS: Yep.

27 THE COURT: Well, let me just find it so I can

1 follow you on it.

2 THE WITNESS: He said it was 589. . . .

3 ATTY. COLLINS: 589,293.

4 THE WITNESS: Okay. That makes sense.

5 THE COURT: One second.

6 THE WITNESS: I'll agree to that.

7 ATTY. COLLINS: But it's not included in this
8 list.

9 THE COURT: 589 --

10 THE WITNESS: Oh, I'm sorry. I'm sorry. You're
11 right. It was on my prior list and when I copied it
12 over --

13 THE COURT: Oh. So you've got to add that in.
14 Well that makes the difference of the 60-40.

15 ATTY. COLLINS: That's the point.

16 THE WITNESS: Okay. But the point is, I'll show
17 you my handiwork that I took this off of. I was
18 upstairs doing this very quickly. It was on the
19 prior list, so that's just a transcription error.

20 THE COURT: All right. Just let me add it in.

21 THE WITNESS: -- if I finished it.

22 THE COURT: So it's 589,293.

23 THE WITNESS: 'Cause you'll note from the prior
24 court recording that that number was on the previous
25 conversation. So -- it was at a lower number,
26 however.

27 That's why I didn't add it up.

1 THE COURT: I'm just going to check arithmetic
2 again. As a result of the judgment, based on the
3 testimony of Mr. Nowacki here, he ended up with -- if
4 this arithmetic is right, and I've added the 589 to
5 the 1433 to get 2,023,074. Is that close to what you
6 have, Mr. Collins?

7 ATTY. COLLINS: Yes, Your Honor.

8 THE COURT: We're a few dollars off; is that
9 basically it?

10 ATTY. COLLINS: Yes, but --

11 THE COURT: And Mrs. ended up with 1,474,758;
12 that was my number.

13 ATTY. COLLINS: Yes, Your Honor.

14 THE COURT: So let me just figure this out
15 then.

16 (Pause)

17 THE COURT: So the combined totals of those
18 numbers is just a few dollars under 3.5
19 million dollars.

20 ATTY. COLLINS: Yes, Your Honor.

21 THE COURT: And 60 percent would be 210,
22 2,100,000.

23 ATTY. COLLINS: Right.

24 THE COURT: All right. If you want to make a
25 note of that, Mr. Nowacki.

26 THE WITNESS: Yeah, I --

27 THE COURT: That's from your numbers.

1 THE WITNESS: Yes. Thank you.

2 THE COURT: Okay. We'll continue the
3 questioning.

4 BY ATTY. COLLINS:

5 Q Mr. Nowacki, before we broke for lunch, are we agreed
6 sir, that your assets after what we just did, taking the
7 information that you provided us, you worked on during your
8 lunch break, and added in the pension is \$2,023,074; that
9 was total assets in your column, assuming the math is right
10 and all that.

11 Is that correct, sir?

12 A Before liabilities, yes.

13 Q Before liabilities.

14 Now your affidavit dated September 15th, 2009 has you
15 with total assets --

16 THE COURT: September 15th?

17 Q September 15, 2009, has you with total assets of
18 \$2,352,518, correct?

19 A Um --

20 Q That's your current affidavit.

21 A I have to go get it.

22 ATTY. COLLINS: Your Honor, may the witness --

23 THE COURT: Yes.

24 (Witness steps down)

25 A I presume you're reading off --

26 Q I'm reading off your September 15th, '09 affidavit.

27 A We found a couple of mistakes on there.

1 Q We're going to go through everything.

2 THE COURT: One second. Let me find it, too.

3 A -- be a function of those mistakes.

4 It was a transcription mistake from the last time.

5 (Pause and witness resumes.)

6 Q All set?

7 A Um-hmm.

8 Q Okay. Do you agree sir, that on your current
9 financial affidavit your assets are 2,352,518?

10 A We discovered some errors.

11 THE COURT: He's starting with that.

12 Q Right.

13 THE WITNESS: So the answer is, that's the last
14 page of what I signed. And we both are acknowledging
15 that there were some transcription errors that were
16 caught last time around. So

17 BY ATTY. COLLINS:

18 Q Well, I'm not acknowledging anything. We'll work our
19 way through that.

20 When my client does it, it's a lie. When you do it, it's
21 a transcription error.

22 THE COURT: All right. Okay. We don't need any

23 --

24 ATTY. COLLINS: All right.

25 THE WITNESS: No, omission is different than
26 commission.

27 THE COURT: All right. See. Somebody's got to

1 get the last word, here. And it's not the Judge.

2 ATTY. COLLINS: Can't help myself.

3 THE COURT: In my house, it's the wife.

4 THE WITNESS: It's not that way in my house any
5 longer, Your Honor.

6 BY ATTY. COLLINS:

7 Q All right. So you would agree that that number is
8 \$330,000 higher than the number that we arrived at a few
9 moments ago as to what the assets were that you got from the
10 dissolution, correct, sir?

11 A Um --

12 Q The two million -- Just -- we can talk about
13 transcription errors. But right now, were you aware that
14 that's \$330,000 higher?

15 A Yes, I would agree with that assessment.

16 Q Okay. Now, further on your current financial
17 affidavit, the mortgage on your property is now \$672,000
18 principle amount, is that correct, sir?

19 A That's an approximate estimation based on my best
20 recollection, yes.

21 Q Okay. Well, it says, Less current mortgage balance
22 estimate. So 672 is about the right number, correct?

23 A That is -- that is correct.

24 Q And the combination of the two mortgages on your '05
25 affidavit is \$258,500, correct?

26 A That is correct.

27 Q Okay.

1 THE COURT: One second. Let me catch up.

2 ATTY. COLLINS: Um-hmm.

3 (Pause)

4 THE COURT: What's the number you said?

5 ATTY. COLLINS: The new affidavit --

6 THE COURT: Oh, the old --

7 ATTY. COLLINS: -- the old affidavit --

8 THE COURT: Yes.

9 ATTY. COLLINS: -- if you add the two
10 mortgages --

11 THE COURT: Is 258,500?

12 ATTY. COLLINS: 258,500.

13 THE COURT: Okay.

14 BY ATTY. COLLINS:

15 Q So at some point, sir, I presume you refinanced those
16 mortgages, is that correct?

17 A To pay the \$450,000, that's correct.

18 THE COURT: That's what he testified --

19 Q Right. And that's where the cash out came from,
20 correct?

21 A That's correct. It was I believe the transaction
22 finalized on July the 27th.

23 Q Okay.

24 A And a check was so issued for \$450,000.

25 Q So thus far we've determined that the assets that you
26 got as opposed to the assets listed on your current
27 financial affidavit are not only \$330,000 more now, but you

1 have to add to that that you've decreased the equity
2 position in your property by some \$414,000?

3 A That's an incorrect --

4 Q Because you borrowed more.

5 A That's an -- that's an incorrect statement.

6 Q Why is that an incorrect statement?

7 A Because that's not what occurred.

8 Q Well, here's what I'm looking at.

9 A All right. This is what --

10 Q I'll ask the questions.

11 A All right. That's fine.

12 THE COURT: Let him ask you.

13 Q Your \$2,352,000 is net of a \$672,000 mortgage,
14 correct?

15 A Yes.

16 Q Okay. And your \$2,023,000 from the date of
17 dissolution is net of a \$250,000 mortgage, correct?

18 A Right. But the equity increase is not in the house,
19 it's in the value of my pension plan.

20 Q That's not the point.

21 A So you asked me the question, whether or not the
22 equity in the house --

23 Q I don't have to adopt your question. I can ask it my
24 way, then you can cross-examination yourself.

25 A No. The question you asked is whether or not --

26 Q The question I asked, and I'll restate it.

27 A -- the equity in my house.

1 Q I'll re-state it.

2 The question I asked was: is your affidavit now
3 reflective of \$2,352,000 net of a \$672,000 mortgage?

4 THE COURT: He answered that, yes.

5 Q Okay. So you've increased your liabilities and yet
6 you still have \$330,000 more than you had in assets at the
7 time of your dissolution, correct?

8 Yes or no?

9 A We'll get to the reason why, I assume.

10 Q Yes or no?

11 A Yes.

12 Q Now, you've also taken a loan out --

13 A My goodness.

14 Q -- against your 401K, have you not?

15 A That was to pay my lawyer, sir.

16 Q Whatever it was for, you took it out, right?

17 So the amount listed on your current financial affidavit
18 reflects a loan against your 401K, correct?

19 A That is correct.

20 Q Okay. So that's another \$30,000 -- you're still
21 \$330,000 according to what you got at the time of the
22 dissolution, what you reflect on your current financial
23 affidavit, net of a loan against your 401K and the increased
24 loan that you took against the marital residence, correct?

25 A Correct.

26 Q Okay. And all this period of time you've been paying
27 65 percent of the Schedule B expenses relative to the minor

1 children; is that a fair statement?

2 A As you know we have a --

3 Q I'm just asking, have you paid --

4 A No. As of --

5 Q -- 65 percent --

6 A As of what date?

7 Q Up to date.

8 A The answer is we have a dispute in regards to certain
9 May 15th expenses. And we have yet to reconcile September
10 15.

11 Q Okay. So --

12 A So, up to the point in time of February the 15th,
13 2009, that is correct.

14 Q Okay.

15 A I have paid 66 percent of those expenses.
16 And have --

17 Q So your testimony that you need a reduction because
18 you are not able to do certain things for the children would
19 suggest that you would be able to save more money to do more
20 things for the children. But in fact, you've been able to
21 increase your value substantially since the date of
22 dissolution, paying 65 percent. Isn't that true?

23 A That's false, sir.

24 Q It is, sir.

25 And why is that?

26 A Because the majority of the increase in my asset base
27 has to do with the fact that my pension when we got divorced

1 was worth \$589,000, and now it is worth \$889,000.

2 Q Sure.

3 A And that's a function of the vesting that occurs when
4 you turn age 55.

5 Q Sure. And that having been said --

6 A So, therefore at the point in time we got divorced,
7 my pension was not fully vested.

8 Q How old are you now, sir?

9 A I just turned 57, sir.

10 Q And when are you eligible to draw your pension?

11 A I have a very unique lump sum distribution option
12 that exists underneath my pension plan.

13 Q Is it your intention to take the lump sum?

14 A I have no idea what I'm going to do.

15 Q Well, that's my question. When is the earliest
16 possible date that this can go in the pay status?

17 A It's not a pay status. It's a pension --

18 Q When is the earliest possible date, if you retired
19 today --

20 A A pension benefit is not payment, sir.

21 Q Yeah, it is.

22 A It is not.

23 Q The question is, that's why you put a lump sum value
24 on it. You can take it in a lump sum according to what you
25 say your plan is. You can also take it in payouts, can you
26 not?

27 A I could take a monthly payout. I could take a -- a

1 number of different things.

2 Q Exactly.

3 A But I have no idea what I'm going to do. That was
4 your question.

5 Q And my --

6 A I don't have a clue.

7 Q My question is, what is the earliest possible date
8 that you can take your pension?

9 A There -- there's all sorts of tax consequences to
10 that. I can't --

11 Q That's not the question, sir.

12 A I --

13 Q The question is --

14 A I can't tell -- I can't answer that question. I'm
15 not a tax expert. I don't know.

16 Q Now the question I have is, do you have to be 59, to
17 take that pension, do you have to be 62; can you take it
18 today at age 57, if you quit today?

19 A I'd have to go back and look at the document that is
20 the plan document.

21 Q Okay.

22 A I don't -- I don't know. I -- my -- I presume that
23 there would be an option that would be available that I
24 could take that lump sum if I got fired. Which you'd love
25 to see me get fired, wouldn't you?

26 Q When you say that you had to borrow against your 401K
27 to pay the attorney, how much did you borrow?

1 A Well it was a combination of things that I used to
2 basically borrow -- I borrowed originally \$50,000, which was
3 the maximum. A portion of that went to basically go buy the
4 Ford Explorer. A portion --

5 Q Well, you borrowed from your 401K for reasons other
6 than to pay your lawyer then, you're saying. Right?

7 A No. It was a combination of things. I owed Tom
8 Parrino \$38,500 --

9 Q And when did you pay him?

10 A I took a loan -- all right. Just, would you allow me
11 to -- allow me to finish?

12 Q Well, because we keep going off on tangents --

13 A No, I'm not.

14 Q You're testifying --

15 A I'm answering your question, sir. If --

16 Q You testified --

17 A -- you let me finish the answer.

18 Q You testified three minutes ago that you borrowed
19 against your 401K to pay your lawyer. Period. That's what
20 you testified to.

21 Now you're telling us something different. So what did
22 you borrow against your 401K for?

23 A The reason why I never finish answering my question
24 sir, is you keep interrupting me.

25 Q What'd you borrow against the 401K for? What did you
26 borrow it for?

27 THE COURT: Look, finish your answer. Go ahead.

1 THE WITNESS: It was a combination of making a
2 partial payment to my lawyer, and then I made another
3 payment to my lawyer, upon the -- the bonus that was
4 paid the following year, which was by mutual
5 agreement. My attorney --

6 BY ATTY. COLLINS:

7 Q But that's not my question.

8 A The answer is --

9 Q When you say it's --

10 A -- where did the money go? The money went --

11 Q No --

12 A -- to a combination of buying the Ford Explorer and
13 paying a portion of the outstanding attorney fees.

14 Q At the time of the dissolution there was no loan
15 against the 401K. Is that an accurate statement?

16 A On June 29th, that's correct.

17 Q When did you borrow the money against the 401K?

18 A I -- my best recollection, I don't know. I don't
19 remember. But I -- I -- it was some --

20 Q Did you borrow in one lump sum?

21 A Yes, I did.

22 Q Well --

23 A And actually, I believe what happened was, I had to
24 pay off the old loan that I took out that was related to the
25 interim, and then I had to wait one year, is my best
26 recollection. Because --

27 Q Well there's no loan reflected on your financial

1 affidavit of June 23, 2005 against the 401K.

2 A That's correct. Because there wasn't one.

3 Q All right. So post-judgment, how much did you borrow
4 against the 401K?

5 A There were two specific transactions that occurred.
6 According to company policy, once you take out a loan -- and
7 this is something unfortunately I found out -- that you
8 cannot take out a second loan until you pass a year from the
9 point you pay back the first loan.

10 So I took a loan. And then I had to pay back the loan
11 with a portion of the proceeds of the refinancing of the
12 house, which I was really not prepared to have to do.

13 And then I had to wait one year before I could take out
14 the \$50,000 loan against my 401K. I believe that occurred
15 in September of 2006.

16 Q Is it from that \$50,000 that you paid Tom Parrino?

17 A No. It was from the original amount that I paid
18 that. All right? I paid a portion to Tom Parrino, which I
19 think totaled something along the lines of \$25,000. I'd
20 have to go back and look. I don't remember the specific
21 number --

22 Q What did you use the \$50,000 for that you borrowed in
23 September of '06?

24 A It was to retire a -- debts that had been
25 accumulating. It had been you know, a -- a variety of
26 things. I'd have to go back and look at the checks. I
27 don't remember.

1 Q Use it for a variety of reasons.

2 A Yeah, a variety of reasons is

3 Q But as of the date of dissolution, you had no loan
4 against the 401K, correct?

5 A That's correct.

6 THE COURT: Mr. Collins, could I just back you
7 up a step?

8 ATTY. COLLINS: Yes, Your Honor.

9 THE COURT: Just to clarify for my benefit. And
10 you can help me, too if you --

11 ATTY. COLLINS: Yes, Your Honor.

12 THE COURT: When we went through the
13 distribution of the assets at the time of judgment,
14 talking about the house, where did we get the number
15 1,231,000, which we had to go 450 to the wife and the
16 rest to the husband?

17 ATTY. COLLINS: One million --

18 THE WITNESS: Three? I thought we --

19 THE COURT: 1,231,000.

20 THE WITNESS: Well the difference in the
21 calculations would have been -- and again, the
22 reference point was that if we had to sell the house
23 the net proceeds that would have been available would
24 have been reduced by roughly \$100,000.

25 THE COURT: I'm not talking about that.

26 THE WITNESS: Which is the difference.

27 THE COURT: I'm talking about, what number was

1 used to determine that near column was 781,314?

2 THE WITNESS: We added those together. I just
3 used what Your Honor used.

4 THE COURT: Well, what did we add together?
5 That's what I'm trying to -- I forgot.

6 THE WITNESS: When we add those things together,
7 that would have been a million --

8 THE COURT: 231.

9 THE WITNESS: 231.

10 THE COURT: Yes. And where did we get the
11 1,231,000? That's what I'm trying to find out.

12 ATTY. COLLINS: Well, here's my best guess --

13 THE WITNESS: It was 100 off the 1-5, minus the
14 two loans that totaled 250.

15 THE COURT: Oh, the 258-5, is that what you're
16 going to say --

17 THE WITNESS: Yeah.

18 THE COURT: -- Mr. Collins?

19 Two fifty --

20 ATTY. COLLINS: Well not exactly, Your Honor.

21 THE COURT: Well, what were you going to say?

22 ATTY. COLLINS: The number that puts me at
23 1,231,000 is a value derived from my client's
24 affidavit, which would be a million-six.

25 THE COURT: Okay.

26 ATTY. COLLINS: Less the two mortgages, 128,686
27 and 140,000.

1 THE COURT: Right.

2 ATTY. COLLINS: That brings you down to
3 1,331,000.

4 THE COURT: 1,331,000?

5 ATTY. COLLINS: Right.

6 THE COURT: Okay.

7 ATTY. COLLINS: And then my best guess --

8 THE COURT: Took another hundred off because it
9 didn't --

10 ATTY. COLLINS: That's not something reflected
11 on her financial affidavit.

12 THE COURT: Oh, okay.

13 ATTY. COLLINS: But 120 is reflected on Mr.
14 Nowacki's affidavit. So my best guess is that we're
15 \$100,000 higher on my client's financial affidavit
16 with no credit for projected closing costs.

17 THE COURT: Oh, okay.

18 ATTY. COLLINS: But if you apply 100,000 --

19 THE COURT: Here's the question I'm getting at
20 then. Okay. I can see where we got the number.

21 THE WITNESS: Right.

22 THE COURT: But the point you were making of
23 asking the witness, that the 2 million dollars that
24 we determined from adding up the list of what he got,
25 is 450,000 short of what it should be; is that what
26 you're saying?

27 ATTY. COLLINS: No, Your Honor. No. It's --

1 it's probably --

2 THE WITNESS: No.

3 ATTY. COLLINS: It's probably -- it's probably
4 pretty close to an accurate number.

5 THE COURT: But then what was your point about
6 the mortgage, that he had to borrow it to pay his
7 wife?

8 ATTY. COLLINS: My point is that his assets are
9 not only \$330,000 more today, assets-to-assets, but
10 he also has more of a lien against the house, which
11 exceeds the old lien by \$415,000.

12 THE COURT: Right.

13 ATTY. COLLINS: So the point is, is that if he
14 didn't have that extra 450 in there, his assets would
15 be 450 more. They're already 300 and something more.
16 They're actually -- in actuality --

17 THE COURT: Well, that 300 and something is a
18 different issue.

19 But aren't you double counting when you say it
20 would be 450 more? Because we took it off on top.

21 THE WITNESS: That is correct.

22 ATTY. COLLINS: But his liabilities increased.
23 No, I don't think we are double dipping.

24 THE COURT: You don't.

25 ATTY. COLLINS: I don't think so. I'll consider
26 it, Your Honor. But

27 THE COURT: Be that as it may though, you're not

1 making a point that it should be 450,000 more as a
2 result of the judgment?

3 ATTY. COLLINS: No, Your Honor.

4 THE COURT: Okay.

5 ATTY. COLLINS: No.

6 THE COURT: And the only other adjustment I
7 would point out to you that we've overlooked is the
8 error on the current affidavit by using the
9 1,121,025 -- I'm looking at Mister's affidavit where
10 he made 772. And if you do the arithmetic of 1650
11 minus 672, it's more than that by \$100,000.

12 ATTY. COLLINS: Actually, the number we came up
13 with is 878.

14 THE COURT: Do you see where I'm talking about?

15 THE WITNESS: No. Right. We discussed this
16 last time.

17 THE COURT: Yes, I know you did.

18 THE WITNESS: Yeah. Right.

19 THE COURT: And you said -- trying to say, that
20 that adds that much more to it.

21 So instead of the difference being from 2
22 million to 2.3, it's 2 million to 2.5.

23 ATTY. COLLINS: That's correct, Your Honor.
24 Yes.

25 THE COURT: Did you follow the arithmetic on
26 that sir?

27 It's the difference between the 2 million and

1 the 2.3 that everybody agreed on.

2 THE WITNESS: Right.

3 THE COURT: Would be adjusted by the other 100
4 or 200 more to bring it up to 2.5.

5 At the very least, it'd bring it up 100,000,
6 because you said you made an error of 100,000.
7 Right? Do you follow me?

8 THE WITNESS: Well -- say, I'm looking at the 16
9 that it would make -- yes.

10 That way it would have been 878 --

11 THE COURT: Yes.

12 THE WITNESS: -- versus 772.

13 THE COURT: Right. So this --

14 THE WITNESS: That's roughly 100.

15 THE COURT: So that would be 2.4.

16 THE WITNESS: Correct.

17 THE COURT: And arguably, if it be another
18 hundred arguably, because you didn't sell the house.

19 THE WITNESS: Correct.

20 THE COURT: Okay. That's

21 ATTY. COLLINS: That's it, Your Honor. Thank
22 you.

23 THE COURT: All right.

24 BY ATTY. COLLINS:

25 Q Mr. Nowacki, do you have your current financial
26 affidavit in front of you, sir?

27 A Yes, sir.

1 Q You would agree, sir, that your affidavit of
2 September 15, 2009 and June 23, 2005 has about \$2500 more in
3 base salary income. We went through that this morning.

4 Do you agree with that, sir?

5 A That is correct.

6 Q One thing that's taken out of your salary now that
7 was not taken out of your salary then is -- how much is it
8 per month?

9 How much is your 401K loan?

10 THE COURT: Loan?

11 ATTY. COLLINS: Yeah.

12 THE COURT: It's 847 a month. But you want to
13 know the balance of the principle

14 THE WITNESS: It's in here.

15 ATTY. COLLINS: Well, I'm trying to get to that.

16 THE WITNESS: No. It's -- it's in the document
17 here somewhere.

18 BY ATTY. COLLINS:

19 Q Okay. So, but your 401K loan is 847 a month,
20 correct?

21 THE COURT: Page 1 of your current affidavit.

22 THE WITNESS: What -- what line are we looking
23 at there?

24 THE COURT: It's the deduction from your gross
25 salary.

26 THE WITNESS: I'm looking at the September 15th
27 affidavit, and --

1 THE COURT: Half way down.

2 THE WITNESS: -- I don't see an \$800 dollar
3 number anywhere.

4 BY ATTY. COLLINS:

5 Q Well, it's about mid-way down the --

6 A Oh, I got it. I got it. Less 401K. Yeah. 847.
7 Yeah. That's correct.

8 Q Okay. And is that what you've been paying since you
9 borrowed 50,000 in September of '06?

10 A Yes.

11 Q Okay.

12 A It's an automatic --

13 Q And you borrowed 50,000 at that time.

14 A Right. There's a 5 year payback stipulation on that
15 loan, I believe it is.

16 Q Well --

17 A So if you take -- take -- And you know, there's an
18 interest that is accrued to that, that you pay an interest
19 charge against the loan. But it credits against your 401K
20 plan, is how that works. And that's why you borrow against
21 your 401K plan, is you pay the interest to yourself.

22 Q Okay.

23 A Which seems like a good proposition.

24 Q Did you have a say in how much your monthly payment
25 is?

26 A No. It's an automatic --

27 Q Okay.

1 A -- total.

2 Q So at 847 a month over 36 months.

3 A No. I said -- I said five years, I believe it is.

4 Q Well you said that. But I'm trying to figure out how
5 much you paid off thus far.

6 A Well, like I said, I -- I'm giving you my best
7 recollection. That may not be accurate as to when the loan
8 was initiated.

9 Q Well here's my question: Are you making any current
10 contributions to your 401K?

11 A Yes. It's all the way at the bottom. It says, Less
12 voluntary contribution to retirement pension, \$1,041.86.

13 Q That's your 401K, not that 880-something thousand
14 dollar.

15 A No. But in essence the interest on the loan, which
16 is a very smart thing to do, is to borrow the money and pay
17 the money back to yourself, rather than borrow the money and
18 paying -- paying it back.

19 Q I understand the logic behind it. So if you've paid
20 36 months at 847, you've paid off over \$30,000 back to your
21 401K, correct?

22 A Well, I want to say, what is the -- what is the net
23 amount of the loan that's remaining?

24 Q Well that's --

25 A Isn't it 23,000?

26 Q You put 30, but you said you borrowed 50.

27 A Right. But I think the loan is something like

1 \$23,000, right now, based on what was updated here, right.

2 Q So the affidavit that I have, as of September 15th,
3 2009 suggests a 30,000 loan. Balance, anyway, I suppose.

4 A No. It doesn't. What it says is 23,998.

5 Q Oh, but it says the loan was 30,000. So was the loan
6 something different?

7 A No, no. Okay. What happened was -- is that again,
8 the amount that was borrowed was 50. I've paid back roughly
9 30. When you add in the interest charge on the loan, that's
10 why you end up with a balance of 23,998.

11 Q Why does it say 401K loan of 30,000?

12 A You know what? Can't tell you. All I know is the
13 remaining principle on the loan is 23,998 as of just before
14 I filed this financial affidavit.

15 Q But your testimony is the original amount borrowed --

16 A The original amount is 50. Yeah.

17 Q 50,000?

18 A I don't know how many times I need to say it. Yes,
19 the original amount was 50. I just don't recollect the
20 specific date. It was an issue. My best recollection would
21 be approximately 3 years ago. But I can tell you, Mr.
22 Collins, I'll get back to you on that, and I'll have that
23 answer for you for the next hearing.

24 Q Wonderful.

25 Now, the life insurance premium of \$495 a month, is that
26 a mandatory payment?

27 A 495 for . . . ?

1 Q Well it's on your current financial affidavit.

2 A All right --

3 Q Life insurance premium.

4 A The answer is, it's -- it's partially to fund the
5 life insurance that's required underneath the separation
6 agreement of a million dollars.

7 I chose to increase that amount in the context of in the
8 event I had an untimely death, that I would be taking care
9 of Tim's additional prep school education, and other things
10 that I would like to provide for the children.

11 So actually I carry more life insurance than what's
12 necessary because it's in the best interests of our children
13 to do so, and they're named as the beneficiaries on those
14 policies.

15 THE COURT: So is the answer that it's not
16 mandatory --

17 THE WITNESS: It's not mandatory, but it's part
18 of the million dollars that I would be short, if I
19 just carried the two policies that I currently have
20 that have loans against them.

21 THE COURT: Yes. I understand your basis for
22 it. But that wasn't the question.

23 THE WITNESS: But, is it mandatory? A portion
24 of it is.

25 BY ATTY. COLLINS:

26 Q Well here's my question --

27 A A portion of it is.

1 Q On page 8 of your financial affidavit, at the bottom
2 of the page, you reflect a Prudential life insurance policy
3 with a face value of 1,171,000, correct?

4 A And that's the company-paid insurance.

5 Q That's the 495 a month that you pay?

6 A That's correct.

7 Q Okay. And you have 465,000 face value, which is --

8 Q Well, here's my question then: What's \$60.13 at the
9 bottom of page 8?

10 A The cash value of the plan.

11 Q But the payment is 495.32 a month.

12 A Correct.

13 Q And you carry, if I understand correctly -- about a
14 million-eight in insurance, correct?

15 A And the reason why I do that --

16 Q No, I'm just asking.

17 A Okay. The reason why I do that is in the event that
18 I owed a certain level of college education, I wanted to
19 make sure that if -- if I had an untimely death, that our
20 children's college education would not be compromised. And
21 that's the reason why I carry that much insurance.

22 Q I understand the prudence of it. But my question
23 is, your employer doesn't mandate that you carry that policy
24 and pay 495 a month, correct?

25 A Mandate? No.

26 Q Yeah. No, okay.

27 A No. No employer as far as I know mandates that you

1 carry insurance.

2 Q And you exceed the separation agreement-required life
3 insurance by some seven or eight hundred thousand dollars,
4 is that correct?

5 A Because it is prudent, that is correct.

6 Q Okay. You voluntarily contribute 1,041.86 per month
7 to your 401K?

8 A Yes, sir. I like to save.

9 Q But that's elective, right?

10 A Sure it is.

11 Q I'm sorry?

12 A Every savings is elective.

13 Q Is there an employer matching?

14 A Sure.

15 Q How much is the employer matching?

16 A I'd have to get back to you on that. I don't know
17 off the top of my head.

18 Q Do you know that percentage?

19 A Off the top of my head, I don't remember the
20 percentage.

21 Q How often do you get statements?

22 A Um -- every quarter, actually.

23 Q The \$672,000 mortgage that you currently have on the
24 house, looking at page 3 of your financial affidavit --
25 well, withdrawn.

26 Q What is the term of that mortgage; in other words how
27 long does it run?

1 A It's a 10 year interest only 30 year mortgage that
2 was initiated on July the 27th of 2005.

3 Q So you have paid in 4-plus years, correct, sir?

4 A That is correct.

5 Q You reflect mortgage: \$2500 a month for principle on
6 page 3 of your affidavit. Now you said it's an interest
7 only mortgage; so why is there a principle payment; is that
8 voluntary?

9 A Well, you know, I'm not going to get into my
10 financial management of this situation. But it's certainly
11 --

12 Q Why not? That's what we're talking about.

13 A -- one of the -- But I'll be happy to give you the
14 explanation for why I do that. Okay?

15 Q Okay.

16 A Is that if you project out what the payments on this
17 loan are if I don't pay it down, it would be unaffordable
18 for me to continue to live in the house over a long period
19 of time.

20 The interest --

21 Q So you voluntary -- I'm sorry.

22 A The interest on the loan is \$36,000 a year. If at 10
23 years that payment balloons, all right -- So in -- in July
24 of 2015, that payment balloons to \$6600 a month.

25 My objective is to get that -- and that's the reason why
26 I structured things the way that I did with certain income
27 assumptions -- was relating to keeping my mortgage payments

1 constant by the time I got to the tenth year.

2 In order to do that it would require that I pay down that
3 loan to roughly \$360,000. And I'm way behind because I'm
4 making less money now by a sizeable amount. I'm making less
5 money for the projectable future, and that therefore it's
6 necessary to preserve the home for our children, which has
7 been my objective from the very beginning of this process,
8 to make a principle payment to the tune of what I had
9 figured out was \$360,000 is what I needed to pay back over
10 the first 10 years.

11 All right. I'm way behind on that because of
12 the decline of income, because I'm trying to provide
13 a standard of living for our children appropriate to
14 that. And that I'm trying to maintain the home for
15 our children over the long haul.

16 THE COURT: You said decline of income, as
17 compared to when?

18 THE WITNESS: AS compared to 2009, current year,
19 to 2008.

20 THE COURT: You're talking about because of the
21 bonuses?

22 THE WITNESS: Correct. They're down
23 substantially.

24 BY ATTY. COLLINS:

25 Q But you would agree --

26 THE WITNESS: They're down by -- my season to
27 date income's down 25 percent this year, compared to

1 last year.

2 Q But you would agree that you have not suffered a
3 decline in income from the affidavit dated June 23, '05;
4 that that's a benchmark to September 15, 2009; if those are
5 the two benchmarks? Indeed, you make more.

6 A Well, they aren't the two benchmarks necessarily.
7 I'm not willing to accede that point. I believe the current
8 income is the benchmarking tool for the Court.

9 Q Well, is not --

10 A Not the -- not the --

11 Q -- the September 15th, 2009, a reflection of your
12 current income?

13 A That's correct. Current income.

14 Q So that's your current income, and it shows on that
15 financial affidavit that your base salary is \$3,000 more a
16 month than it was --

17 A No. Not per month.

18 Q 2500 --

19 A Annually. Annually.

20 Q No, no. No.

21 A Annually.

22 Q No.

23 A Annually.

24 Q Base salary comes out to \$2500 or so a month, more.

25 A From 2005?

26 Q Yeah.

27 A 2005, okay.

1 Q Yeah.

2 A Fine.

3 Q That's what I'm saying.

4 A Okay.

5 Q Okay. Because I'm not particularly interested in
6 what happened in between. You've got two financial
7 affidavits. So you would agree that you haven't suffered a
8 decline in income between your number in 2005, June, and
9 your number, September of 2009?

10 A No. What I contend, since that's the word you used,
11 what I contend is, that my proportionality of income has
12 declined. That's the point here.

13 Q Proportionate to Ms. Sullivan's.

14 A The combined income. On the first page of the
15 motion. Read the first page of the motion.

16 That's the point.

17 Q The point is that you --

18 A The point is that the motion says that the reason for
19 the request for the adjustment has to do with the change in
20 the proportionality of the income.

21 That's the point.

22 Q Between you and Ms. Sullivan.

23 A That's correct.

24 Q That's your basis.

25 A When you add up both of our incomes --

26 Q I get it --

27 A -- current incomes --

1 Q I get it.

2 A -- the total is different.

3 Q But you don't make less than you did at the time of
4 the --

5 A I didn't say that I made less.

6 Q Okay. That's what I'm just asking.

7 A I never made that statement.

8 Q Okay.

9 A And it's not a statement that's made in the motion.

10 Q All right.

11 THE COURT: You just got through telling me
12 because of your reduction of income. That's why I
13 asked you --

14 THE WITNESS: From 2009 to 2008.

15 THE COURT: Well, that's what he's talking
16 about.

17 ATTY. COLLINS: Well, I'm talking about 2005.

18 THE WITNESS: I'm referring to --

19 THE COURT: I know.

20 THE WITNESS: Well --

21 THE COURT: And he's talking about reduction of
22 income now and future, and you're talking about
23 comparing then and now.

24 THE WITNESS: And the point is, it -- it's not
25 relevant. I don't understand what the relevancy of
26 the income at the point in time is now, because we're
27 talking about a modification motion.

1 The modification motion has to do with what the
2 current incomes are.

3 BY ATTY. COLLINS:

4 Q Versus what they were at the time that the orders
5 were entered.

6 A Correct.

7 Q That's the benchmark.

8 A And -- and that -- and that the proportionality is
9 what has changed.

10 Q Between those two dates.

11 A Correct.

12 THE COURT: You're both saying the same thing.

13 Q Now, do you have your 2009 financial affidavit in
14 front of you September, sir?

15 A Yes, I do.

16 Q How many bonuses have you received this year?

17 A A total of four.

18 Q I'm sorry?

19 A A total of four.

20 Q Four. Okay.

21 A I believe that those are listed on the financial
22 affidavit here. Well the --

23 THE COURT: The quarterly bonus --

24 THE WITNESS: Okay. The quarterly bonus --
25 okay.

26 THE COURT: Is that what you're talking about?

27 THE WITNESS: On --

1 THE COURT: Is that what you're talking about?

2 THE WITNESS: On -- in February 2009, for the
3 fourth quarter of 2008 -- and I believe we went
4 through this at the last hearing --

5 THE COURT: Yes, we did. Go ahead.

6 THE WITNESS: Was \$6100.

7 BY ATTY. COLLINS:

8 Q Well, I want to work it my way, here.

9 A All right. Okay. 520 --

10 Q Now hold on. I'm not --

11 A You're saying there're three.

12 Q I'm not -- there's no question pending.

13 A And then there's an annual bonus.

14 THE COURT: One second.

15 THE WITNESS: There's a total of four.

16 THE COURT: You asked him -- Four's the answer.

17 ATTY. COLLINS: And now I'm going to work off of
18 that.

19 THE COURT: All right. You're talking quarterly
20 bonuses, because he has an annual bonus, too.

21 THE WITNESS: Correct.

22 BY ATTY. COLLINS:

23 Q Right. I just want to know how many bonuses he's
24 been paid this year?

25 A Three.

26 THE COURT: The answer is three.

27 Q The answer's three.

1 A Three, no. Three and --

2 Q It was four a minute ago.

3 A -- an annual bonus makes it four.

4 THE COURT: That's correct.

5 A So it's four is the correct answer.

6 Q Right. Okay.

7 So is it sir, fair to state that --

8 Well, what was your annual bonus paid -- for 2008 was
9 paid in 2009; is that correct?

10 A Correct.

11 Q What was the gross amount of that bonus?

12 A \$85,500.

13 Q And the net was 54,530?

14 A That is correct, sir.

15 Q Now that is not added in to your total net monthly
16 income, bottom line, is it?

17 A No, it -- it isn't.

18 Q Okay.

19 A Because it's not monthly income.

20 Q Okay.

21 A In the same way that your client put her annual bonus
22 on a separate line; it's no different. It's not cash flow.

23 Q And you received that in March. When is the last
24 bonus that you received in this calendar year?

25 A It's listed here in August, 2009. It was a gross
26 amount of \$7,450 and a net of \$4,478.

27 Q And then before that May?

1 A May 20th, 2009, \$6100 gross. Net of 3,619.

2 Q And before that, February?

3 A That is correct.

4 Q And that was what, 10,822 gross?

5 A No. That's 2-20-09 was \$6100, net 3722.

6 Q Oh, I see it. Okay.

7 A It's not on separate lines.

8 THE COURT: Wait a minute. Can you just give me
9 a day? I know I've got it someplace in my notes.

10 THE WITNESS: Oh.

11 THE COURT: But the three that you got from the
12 quarterly bonuses this year, March 1st? No, no.
13 That's '09.

14 Was February of '09, right?

15 THE WITNESS: Correct.

16 THE COURT: That's the first one. That was the
17 6100, and the 3722. Right?

18 THE WITNESS: Correct.

19 THE COURT: As I say, I know we have this
20 someplace.

21 THE WITNESS: Yep.

22 THE COURT: But the next one was May. And that
23 was 6100.

24 THE WITNESS: Correct.

25 THE COURT: Was net of 3619.

26 THE WITNESS: Correct.

27 THE COURT: And the last one you said was August

1 what? You've got it right here, in front of you.

2 THE WITNESS: August 2009.

3 THE COURT: Yes, I see --

4 THE WITNESS: 7450. And the net was 4478.

5 THE COURT: Okay. Thank you. It's right here
6 in front of me.

7 Okay.

8 BY ATTY. COLLINS:

9 Q All right. Based upon those numbers, sir, can we
10 agree that your gross bonus for this year was \$105,150 total
11 of all your bonuses received in calendar year of 2009?

12 A 12-2 and 74 is 19-6. And -- would be 114, did you
13 say?

14 Q 105,150.

15 A 105,150 --

16 Q Up --

17 A 105,150 is correct.

18 THE COURT: Wait a minute. Are we talking net
19 or gross?

20 THE WITNESS: Gross.

21 ATTY. COLLINS: Gross.

22 THE COURT: Well wait one second. Time out.
23 How much did you get?

24 ATTY. COLLINS: 105,150: 19650 --

25 THE COURT: Wait a minute; what's 19,650?

26 THE WITNESS: Those are the three gross bonuses
27 for the three have been received.

1 THE COURT: Yes. 19,650, yes. Go ahead.

2 ATTY. COLLINS: And then 85.

3 THE COURT: That's gross. I added gross, then I
4 added net. That's my fault.

5 104,650, isn't it?

6 ATTY. COLLINS: 104,650 would not be correct.

7 THE COURT: No?

8 ATTY. COLLINS: I got 105,150.

9 THE COURT: Well let's do it.

10 The 19,650 we agree on.

11 ATTY. COLLINS: Yes.

12 THE COURT: And add 85,000 to it.

13 THE WITNESS: 85,500.

14 THE COURT: 85,500. Okay. 105,150. Thank
15 you.

16 It's been a long day. All right.

17 THE WITNESS: I apologize, Your Honor.

18 THE COURT: No, no.

19 THE WITNESS: I wanted it to be a short day.

20 THE COURT: That's okay. Well, that's true.

21 You want me to reconsider, I'll reconsider.

22 BY ATTY. COLLINS:

23 Q Would you agree sir, that your net bonuses for the
24 year thus far is approximately \$69,221? Your net. Adding
25 up the three nets for your periodic bonuses, and then your
26 net for the gross bonus -- I mean for the annual bonus?

27 A What was that number you just said?

1 Q 69,221 net.

2 A I get is --

3 THE COURT: I don't think so.

4 THE WITNESS: 66 and change.

5 THE COURT: Yes. I think it's 66,349, but let's
6 see how you come out.

7 ATTY. COLLINS: I've 69,221.

8 THE COURT: Well, let's do it again. The three
9 for this year: 3722, 3619 and 4478.

10 By ATTY. COLLINS:

11 Q And that's where my mistake is, because I had said
12 7450. 4478.

13 THE COURT: So now try it.

14 ATTY. COLLINS: There you go.

15 66,349.

16 THE COURT: Yes. Do you agree, sir?

17 THE WITNESS: That's what I came up with in my
18 head.

19 THE COURT: That's pretty good. Okay.

20 Q And sir, are you anticipating another periodic bonus
21 in calendar year 2009?

22 A We have been traditionally paid sometime in mid-
23 November as you would note from the records here. And that
24 the trend line on the bonus has been you know, significantly
25 less.

26 So, if you're into the Swami business, I guess that you
27 could make a projection, but I'm not. The trend line here

1 for the company is in the current economy would suggest that
2 you know, it's going to be a number that's below what last
3 year was by a significant amount.

4 If you take a percentage of what the bonuses have been,
5 quarter by quarter, I think the first quarter was down by 58
6 percent. The next quarter was down by in the mid 40s. So
7 if you did a mathematical projection, you would say that
8 that bonus would be down below the 7450.

9 Q When you talk about trend line, what line or trend do
10 you refer to?

11 A Well, I'm referring to comparable periods for the
12 prior year. The comparable period for the first quarter for
13 the one that was paid in March of last year was 14,509. It
14 decreased to 6,100.

15 The next period of time was 10,169. It went to 6100.

16 Q But if you look at this year --

17 A The third quarter at 10,822; that goes to 7450.

18 Q But if you look at this year, you will see that the
19 3rd quarter bonus was higher than each of the first two
20 quarter bonuses.

21 A But what I'm saying is --

22 Q That's a trend line, too, isn't it?

23 A -- you can argue the trend line of the situation.
24 And even so, the percentage of differential is what we're
25 talking about; not that it's less.

26 Q But the point that I would make --

27 A Okay. In the third quarter a year ago, the -- the

1 number, and the reason why that that's paid that way is we
2 have our upfront in the second quarter, the effort that goes
3 into that is usually paid up a little higher. And it all
4 depends upon what happens between now and the period of
5 time.

6 I know, you know, I can't divulge under Sarver and
7 Sockslee (Phonetic) information about what the objections of
8 the company are.

9 Q Have you been advised what your bonus is going to be
10 next month or November?

11 A Absolutely not.

12 Q When do you find that out?

13 A As I said to you, traditionally, it gets paid in mid-
14 November.

15 Q Do you find out in advance?

16 A No.

17 Q Okay.

18 A I mean, what I'm saying. If I made a request on
19 November the 1st, for what the payment might be on November
20 15th, I might get an early reading. I think we did that at
21 one point in time, in one of the -- of the hearings, that I
22 got a letter from the president of sales division that tried
23 to quantify. The decrease was substantial.

24 Q So sir, would you agree that if we took your bonuses
25 actually paid to you to date, your net, and divided those by
26 52, that would be \$1,265 a week net, if you were to amortize
27 those numbers. Am I correct?

1 THE COURT: 66,349?

2 THE WITNESS: You'd have to give me a calculator
3 for me to --

4 ATTY. COLLINS: 66,349 divided by 52, Your
5 Honor.

6 THE COURT: 66,349 divided by 52 equals --
7 what's the number you said?

8 ATTY. COLLINS: The number would be 1265.

9 THE COURT: Per week gross?

10 ATTY. COLLINS: Net. Because the 66 number's -
11 -

12 THE COURT: Oh, net.

13 ATTY. COLLINS: -- a net number.

14 THE COURT: Yes. All right.

15 ATTY. COLLINS: Now the other way to do it Your
16 Honor is that we haven't really had 52 weeks this
17 year. So you could divide 66,349 by the number of
18 weeks to date.

19 THE COURT: Well, there's 13 weeks less -- 39
20 weeks, through September?

21 ATTY. COLLINS: 39 weeks.

22 Which would be \$1701. And we know that there's
23 a bonus perhaps --

24 THE WITNESS: That -- that is an unfair process.

25 ATTY. COLLINS: Okay.

26 THE WITNESS: All right? Because my bonus in
27 that situation is paid on a different cycling. And

1 therefore it's inappropriate to start to allocate, y,
2 by week, that which hasn't been received, or to do it
3 disproportionately in that manner. That's completely
4 mathematical fallacious approach.

5 BY ATTY. COLLINS:

6 Q So it should be ignored; any of your bonus income
7 should be ignored --

8 A No, I said --

9 Q -- or how would you suggest --

10 THE COURT: No. He's talking about --

11 A -- your approach of allocating --

12 THE COURT: -- the 39 weeks.

13 ATTY. COLLINS: I understand that.

14 A -- 39 weeks is a mathematically flawed process.

15 Q Well, we do -- if we do 52 weeks, then can we not
16 include the bonus from 11-13-08 in our 52 week calculation?
17 Which would add a net of \$7,164 to the net.

18 A Well, no. I -- I'm not willing to accede the point
19 to you that --

20 Q Well, the point that I'm making --

21 A -- that 7,184 should be added, because it's not --
22 you know, if you want to pick some number based upon a
23 decline that's appropriate, we would pick a number that
24 would be somewhere between 6100 and 7450; and I'd agree to
25 that. I'd take the midpoint of those two numbers. I think
26 that'd be reasonable and fair.

27 But I'm not willing to give you a net number that's that

1 high, because it's not going to be that.

2 Q Well, we actually do 52 weeks and include the
3 November net bonus, the weekly number would be \$1,413.

4 A We're not including anything that's projected.

5 Q We're not. We're talking about last November.

6 A And I'm suggesting to you, is I'm not willing to
7 accede the point that the bonus was going to be that large.
8 It's not.

9 Q You don't have to. I'm just saying if I can't use 39
10 weeks and I have to use 59 weeks, then I have to use all the
11 income from 59 weeks, and all the --

12 A 52. Well, you want --

13 Q -- includes last November's bonus.

14 A There's only 52 weeks in the year.

15 Q Pardon me?

16 A I said 52 weeks, I think you meant to say. You said
17 59 weeks.

18 Q 52 weeks.

19 A No, you said 59.

20 Q 52 is what I meant to say. So the point is, if I
21 have to use 52 weeks, then I can go back 52 weeks, can I
22 not?

23 A Not necessarily.

24 Q Can I?

25 A No.

26 Q Okay.

27 A And I don't agree. I -- I won't accede to that

1 point.

2 THE COURT: Well, let's not --

3 ATTY. COLLINS: It's academic. The Court --

4 THE COURT: It's not something you both have to
5 agree on.

6 ATTY. COLLINS: -- can consider it however the
7 Court would like.

8 THE WITNESS: The approach is flawed.

9 BY ATTY. COLLINS:

10 Q Okay. And why sir, did Ms. Sullivan only get
11 \$450,000 out of the equity in the marital residence?

12 A Because that's what we agreed to.

13 Q Why?

14 A That was done via negotiations.

15 Q But what was the basis?

16 A The basis was as follows: It was my assertion, and I
17 can provide you with documentation if you would like to hear
18 that documentation, that there --

19 Q Just tell me why.

20 A -- was a difference in assets of \$180,000 in the base
21 of the marriage. We also were talking about \$200,000
22 additionally for each of the children of which -- on the
23 college education front, that I was absorbing a larger
24 portion of the amount that would have been over the state
25 cap in the event that -- that Attorney Tom Colin forced us
26 to trial. And there would have been even less assets too
27 split up by the time we paid another \$75,000 a piece for

1 attorney's fees.

2 All right? So, at that point in time this to me
3 represented a fair settlement of the assets, knowing that we
4 were also taking children's best interests on the education
5 front into consideration.

6 If your client wanted a 50-50 split, she could have then
7 gone to court. We could have wasted all that money. And
8 then at the end of that process, the Court would have ruled
9 a cap on the state college education front.

10 And in the end had we done that the actual responsibility
11 then, would have fallen solely on the shoulders of your
12 client for having pushed this to a point to have diminished
13 the assets. That's the reason why we ended up at 450. It
14 was very well thought out, and very fair.

15 Q So the answer is --

16 A And very fair.

17 Q The answer is, fight me, and you lose the money and
18 you're responsible; isn't that what you were answering?

19 A No. You know what it is? It's referred to as a cost
20 benefit analysis.

21 Q So why --

22 A And -- an my attorney --

23 Q -- how does she benefit?

24 A -- at that point in time used to talk to me about
25 cost benefit analysis all the time; that at some point in
26 time you reach a point of diminishing return in any
27 negotiation. This is true in any negotiation, including

1 nuclear arms limitation talks. All right?

2 I studied negotiations when I was in high school with the
3 guy that ran the committee for A Clear and Present Danger, a
4 guy named William Van Cleave, who sat on the Salt Limitation
5 talk. And he taught me how to negotiate.

6 And one way to negotiate is to verify information, to
7 validate what your opponent is saying, and know the answer
8 to those questions before you get there.

9 And the point of this is, is that I negotiate for a
10 living every day, for the last 35 years. Did I negotiate a
11 tough bargain? You bet. Because it allowed me to keep our
12 children in their home, and they are thrilled with that
13 arrangement.

14 I did it not for myself. I did it for them. And they
15 are better off for it. And I make no apologies for that.
16 None. Zero.

17 What was done was fair and equitable and took the
18 children's best interests into consideration above your
19 client's interests, personally.

20 I make no apologies for that. None.

21 Q Are you done?

22 A Thank you.

23 You asked me why. Now you know why.

24 Q On your current financial affidavit you have your
25 401K valued as of September 15th, 2009 at 648,338, correct?

26 A That was the most recent statement, yes.

27 Q Yes, sir.

1 And the value of your lump sum pension at 886,000,
2 correct?

3 A That is correct.

4 THE COURT: Incidentally, if you add it up, I
5 think it comes out to more.

6 ATTY. COLLINS: Well, that's what I'm getting
7 at. I just want to make sure --

8 THE COURT: It's about \$90,000 more.

9 ATTY. COLLINS: right.

10 THE COURT: Just on the arithmetic we're talking
11 about.

12 ATTY. COLLINS: I just want to make sure. I get
13 more than 90, but I just want to double check that
14 I'm right.

15 THE COURT: If you do the arithmetic --

16 THE WITNESS: Right. Yeah, I'm aware of that.
17 That was a -- again, if you go back to the previous
18 financial affidavit, you'll just see that the
19 columns, you know, didn't adjust on the formulas that
20 were built in. And that's what happened.

21 The amount was raised, and the column reflected
22 the previous financial affidavit that was filed.

23 That's -- you know, that's what happens when you use
24 computers, instead of the old school.

25 BY ATTY. COLLINS:

26 Q All right. Do you concede that the value there
27 should be 1,510,350 instead of 1,420,000, sir?

1 A Um -- if you -- that up correctly. Are you
2 subtracting the 401K loan?

3 Q Yes.

4 A You're -- and you said that number is what?

5 Q \$1,510,350.

6 THE COURT: I got 340, but I wouldn't swear to
7 it.

8 THE WITNESS: I'll throw in the extra ten. What
9 a guy.

10 Yes, I'll -- I'll agree with that assessment.

11 Q And is it your position, sir, that the foreign income
12 that you claim that Ms. Sullivan gets would materially
13 impact the decision of this court relative to how the
14 percentages should be applied toward the Schedule B child
15 related expenses?

16 A That's not my responsibility to determine what the
17 Court will do.

18 Q Well, you've made your arguments as recently as this
19 morning, that that is an important factor here --

20 A Well, you know what?

21 Q -- is it an important factor in this motion for you?

22 A The answer is, accuracy is important in the decisions
23 that we come to.

24 Q Well, I'm seeing an affidavit --

25 A And to the extent that the law permits dividend
26 income to be included as income, then it's an important
27 subject for the Court to -- to include.

1 So the answer is less about what the individual year is,
2 it's the cumulative effect of that over the course of the
3 next six years.

4 And at that point in time it does become more substantive
5 when looked at in that manner, which is how I tend to look
6 at the information, is what the long term impact of the
7 decisions are, not on the short term.

8 Q Is it your position, sir that unless the Court
9 adjusts this percentage more to when you want it to be that
10 Tim will not be going to private school?

11 A There are a number of variables that we do not know
12 yet. All right?

13 Q Well, let's assume the Court --

14 A So in regards to the decision -- Well, here's the
15 timing of that decision. All right? The timing of the
16 decision in terms of entry to prep school would come up
17 on -- on the calendar for application at the end of his
18 sophomore year in high school, which would be in June of
19 2011.

20 That the application process, and the closing of the
21 application from the research that I've done, would be
22 approximately February. So we're talking about a decision
23 that would occur in the next 15 months.

24 What can happen in the next 15 months? Any one of us
25 could be unemployed. Any one of us could face a health
26 crisis. Any one of us could have a change of -- of family
27 circumstances that would cause us to have to support a

1 parent who may not be able to take care of themselves.

2 So when you ask me a theoretical question about what it's
3 going to be, all I know without an adjustment, it would
4 appear to be unaffordable for me.

5 THE COURT: Why does that answer apply to
6 college adjustment?

7 THE WITNESS: Well it does.

8 THE COURT: Oh.

9 THE WITNESS: It -- the two dovetail with one
10 another.

11 THE COURT: Yes.

12 THE WITNESS: You know, and that the diminution
13 of the 529 plans, which you know, nobody could have
14 projected in 2005 is a -- is a significant issue for
15 every parent. It's not exclusive to this situation.

16 This is a -- a dynamic that is occurring in every
17 family, married or not.

18 And I --

19 THE COURT: So I've forgotten the gist of your
20 answer. You gist of your answer is --

21 THE WITNESS: I'm just saying is --

22 THE COURT: -- about prep school.

23 THE WITNESS: It -- there're too many variables
24 that are unknown.

25 THE COURT: What was the question?

26 THE WITNESS: To say with certainty that Tim's
27 ability to go to prep school would be compromised by

1 a no adjustment in the expenses --

2 THE COURT: Oh, okay.

3 THE WITNESS: -- and no adjustments in the
4 college.

5 THE COURT: I'd forgotten --

6 THE WITNESS: I believe, depending upon what the
7 adjustment is, and what the arrangement that we make
8 on that which the Court won't decide, which is the
9 apportion then of the prep school, that that'll be a
10 decision that the two parents need to come to; and
11 whether or not we do that on income at that point in
12 time or what the fair variable is, will depend upon
13 the circumstances that -- that are in place at that
14 time.

15 THE COURT: I guess, I don't --

16 THE WITNESS: I don't have the answer to the
17 question.

18 THE COURT: I understand.

19 THE WITNESS: It's -- it's a projection.

20 THE COURT: No, it's a reasonable answer.

21 THE WITNESS: But here's the variables. Those
22 are the variables.

23 THE COURT: Yes. But I understood, and correct
24 me if I'm wrong, what may have generated the
25 question, I thought that you were making a request
26 that the Court consider the fact that your son was
27 going to go to prep school?

1 THE WITNESS: The -- the answer is, yes, we are
2 asking that in the context of the college adjustment.
3 But I thought it was not allowable under the law for
4 the Court to mandate what the apportionment on a prep
5 school would be.

6 I thought that was outside the realm of what the
7 Court could actually do. And if I'm mis-informed
8 about that --

9 THE COURT: No, no. I understand.

10 THE WITNESS: That's -- that's the reason why I
11 --

12 THE COURT: I misunderstood what you said then.
13 You didn't request that to be consideration by this
14 Court.

15 THE WITNESS: No.

16 THE COURT: Okay.

17 THE WITNESS: But without an adjustment in
18 college, which Your Honor for the first time sort of
19 indicated that that is -- possibility, and as to what
20 the extent of that adjustment it.

21 THE COURT: Yes. But I didn't mean to suggest
22 that I made a decision.

23 THE WITNESS: No. But it was a possibility.

24 THE COURT: Sure.

25 THE WITNESS: It was a possibility that it's
26 modifiable, I believe is what Your Honor said.

27 THE COURT: That's correct.

1 THE WITNESS: That it's subject to
2 modifiability; that depending upon what that is --
3 believe me. I would do anything to see Tim realize
4 what he worked so hard for. All right?

5 THE COURT: I haven't heard his mother say
6 otherwise on her part. I've heard her say that she's
7 not objecting to the consideration --

8 THE WITNESS: But you know, if I have to make
9 sacrifices to get him there, I will make what
10 sacrifices are necessary to give him the best
11 opportunity that he would have had, had his parents
12 not been divorced.

13 THE COURT: Okay. No child could ask for
14 anything more, sir. Okay?

15 THE WITNESS: Thank you.

16 THE COURT: Okay. Now let's go back to the
17 question.

18 I might just add for your benefit, counselor,
19 because we keep having this thing about my saying
20 it's modifiable. I would suggest you check
21 the statute, because I think there's a statute that
22 says an agreement in writing signed by both parties
23 for support post-18 is enforceable and modifiable.

24 ATTY. COLLINS: Yes, Your Honor.

25 THE COURT: I think that's --

26 ATTY. COLLINS: I understand that.

27 THE COURT: All right.

1 ATTY. COLLINS: But then again, I do rely on the
2 fact that it is -- I have my argument that it is a
3 civil contract and that there was consideration.

4 THE COURT: Oh, yes. Whether there should be or
5 not is another issue.

6 ATTY. COLLINS: Right. Right. I think we're
7 premature anyway.

8 THE COURT: Well, I don't want either party to
9 understand that I'd made my mind up on that issue.

10 THE WITNESS: No. There was a possibility.

11 THE COURT: Exactly.

12 Anyway, go ahead.

13 BY ATTY. COLLINS:

14 Q In your motion -- Well, hold on.

15 Q So what sir, are you suggesting should be the
16 percentage that you are responsible for of the Schedule B
17 expenses, versus what Ms. Sullivan should be responsible
18 for?

19 THE COURT: Before you answer that -- I'll give
20 you a chance to answer it. I just want to ask the
21 staff and the parties, we normally take a break
22 around this time. And if anybody needs a break we'll
23 take it. Otherwise, I'd like to go a little longer
24 and then quit early.

25 ATTY. COLLINS: Yes, Your Honor.

26 THE COURT: The vote's probably mixed here. So
27 let's take a 10 minute break, and we'll still quit a

1 little early.

2 ATTY. COLLINS: Okay. Good.

3 THE COURT: So that's the answer you start with.

4 All right, 10 minute break.

5 ATTY. COLLINS: Thank you, Your Honor.

6 (A recess was taken.)

7 THE WITNESS: Your Honor, may I show you a
8 picture of my family? And I want you to take a
9 look at the children that you're making decisions on.
10 I think it's really important.

11 THE COURT: Well, you know, I think that's
12 important in these cases. I really do.

13 THE WITNESS: I do. Because they're human
14 beings. They're two wonderful children. They're on
15 the left there, in front of me. This is my sister.

16 THE COURT: All right. We'll wait till they
17 come in. These are the children?

18 THE WITNESS: Yes.

19 THE COURT: Just for the benefit of those who've
20 come in late --

21 MS. SULLIVAN: Sorry.

22 THE COURT: -- Mister is sharing with me
23 pictures, so I could meet the children.

24 ATTY. COLLINS: Ah.

25 THE COURT: Which I think is always a nice idea.

26 ATTY. COLLINS: Absolutely.

27 THE COURT: Even though I'm not dealing with

1 custody in this case.

2 How long ago was this picture taken?

3 THE WITNESS: That picture was taken in -- for
4 my mother's 80th birthday.

5 THE COURT: Are you in the picture?

6 MS. SULLIVAN: No.

7 THE COURT: Okay.

8 All right. What percentage are you requesting?
9 That's the issue.

10 THE WITNESS: Well, Your Honor, I --

11 THE COURT: That's what the question is.

12 THE WITNESS: Quite truthfully, I haven't sat
13 down and figured it out yet, because we still have
14 the issue of certain assets that are providing
15 dividend income that's not on the financial
16 affidavits.

17 So, you know --

18 THE COURT: I might point out to you that in
19 your --

20 THE WITNESS: That since I've been drilled down
21 on this subject of what my assets are, it's a bit
22 unfair to suggest that there's foreign income coming
23 into this account that's not coming from some asset.

24 THE COURT: Let's not go into that right now.

25 THE WITNESS: Okay. But -- But I don't know.
26 But I'll tell you the next time we're here.

27 THE COURT: Well, let me finish my question, and

1 I'll let Mr. Collins

2 In the motion that's before me, 174, you had --
3 the motion several pages of information. And in it,
4 I think you ask for 43 percent. That's what I think
5 you asked for.

6 THE WITNESS: Well, that was based upon the
7 financial situation at that point in time.

8 THE COURT: I'm just asking you --

9 THE WITNESS: And -- and I have not quite
10 truthfully, sat down, because I just got the -- the
11 financial information on September the 10th.

12 THE COURT: All right. I'm not holding you to
13 it. I'm just asking you --

14 THE WITNESS: The answer --

15 THE COURT: -- something must have gone through
16 your thought process to come up with that percentage.

17 THE WITNESS: That -- that was in the motion?
18 At that point in time that was based upon what the
19 known situation was at that point in time. And what
20 is was, was incorrect. Because there was additional
21 income that was not on the financial affidavit, and
22 still isn't on the financial affidavit.

23 THE COURT: Okay. So the answer is you can't --

24 THE WITNESS: But I will -- but I will calculate
25 that for the next session, and I'll have that for you
26 as to what I believe is fair, based upon now having
27 all the information at hand.

1 THE COURT: Okay. That's fair.

2 Q Sir, are you presently -- withdrawn.

3 Q Have you exercised any stock options since the date
4 of the divorce?

5 A Um -- I -- I would prefer to answer that question in
6 the next session to verify the answer.

7 I -- I don't remember in between June and July whether or
8 not there were any options that were available to partially
9 pay off some of my attorney's fees.

10 Q What was --

11 A Beyond that -- Beyond that, I -- I don't believe
12 that there was anything that was exercisable because The VEO
13 option came up shortly after we got divorced.

14 So, I don't believe that that's the case, but there's a
15 way that I can check that in the company computers.

16 THE COURT: Could I interject a question you
17 brought to mind, counselor?

18 In the separation agreement there were certain
19 restricted stock and options that were shared
20 equally, I think. And no values were put on them
21 because they were under water, and so forth and so
22 on.

23 THE WITNESS: Right.

24 THE COURT: Are those into play now on anybody's
25 affidavit, other than that one number on yours?

26 THE WITNESS: Well, yes, they are, Your Honor.
27 And they're in a -- a portion of the VEO option, and

1 it's broken out on my financial affidavit as to what
2 portion of those were attributable to those assets.
3 And they total, I believe one thousand and

4 THE COURT: Twenty five.

5 THE WITNESS: -- twenty five shares.

6 THE COURT: Yes. Okay.

7 THE WITNESS: Those -- those are -- basically
8 what happened was, those underwater options, through
9 some sort of black shoals translation, was -- were
10 then -- we were given the option. We discussed it.
11 I've got e-mails back and forth with Suzanne. We
12 left one set of options that was in the money on the
13 table. And of course, the stock went into the sewer.
14 And those were not exercisable.

15 THE COURT: Okay. Thank you. Go ahead.

16 THE WITNESS: Beyond that, the 1,025 -- reflect
17 those translations after the taxes were paid, which
18 is how the company did so, which was economically
19 beneficial to all parties concerned, was to reduce
20 the shares.

21 THE COURT: Thank you. Go ahead, Mr. Colins.

22 BY ATTY. COLLINS:

23 Q All right. So you're not sure, sir, whether or not
24 you've exercised any options?

25 A I'd prefer to confirm that, and -- and have that
26 answer for you next time. But I'm pretty sure that there
27 were not.

1 Q To your knowledge and information, are any of your
2 stock options in the money?

3 A Well, the -- the restricted shares are always in the
4 money. The company converted when we went to the VEO plan
5 to just restricted options. So, that's reflective here of
6 the unvested shares and the vested shares here, is in the
7 you know, page 8 of the financial affidavit.

8 Q Right. So my question is, is --

9 A Some of those are in the money, yeah.

10 Q -- all the shares that you have can be exercised at
11 this time?

12 A No. It says on page 8, Unvested shares totaling
13 5,557 shares, right? Which include the 3,000 shares that
14 were granted in 2009, which is way higher than anything
15 we've seen granted in the past.

16 And those were granted at \$5.20 a share. Those vest over
17 a three year basis, on the annual date.

18 So each of those, you know, tranches, roughly 1,200
19 shares, vest on the anniversary date of the grant price.
20 And then from 2005 to 2009, and those options were excluded
21 from the agreement. And those total a -- a current value of
22 \$68,000.

23 But that includes the unvested shares.

24 Q In section 2.5 of the separation agreement it says
25 that, with a certain exception, that is 2.8j, the wife shall
26 be the beneficial owner of 50 percent of the husband's
27 vested and unvested stock options that CBS Viacom granted

1 the husband, including, but not limited to the fund of the
2 future stock options, correct?

3 A Correct.

4 Q Has Ms. Sullivan exercised any of those options?

5 A No, sir.

6 Q Have you exercised any of those options?

7 A No, sir.

8 Q And when and if she exercises any of those options --
9 and assuming they're in the money; otherwise why would
10 someone exercise them -- where does her share of the stock
11 options go after you do the tax calculation?

12 A I -- I believe the agreement says that those stock
13 options go to fulfill college plans up to the extent that
14 the law permits; donations to not exceed currently 13,500,
15 12,500, I think is the current year.

16 Q So --

17 A So in the event that we exercise options that
18 exceeded that, then those -- that money would not have to go
19 into the 529 Plans. If it does, then both of us have agreed
20 that those options would go to the benefit of the 529 plans.

21 Q Per --

22 A That includes my half, too.

23 Q Per Section 2.6.

24 A Right.

25 Q So, if any of the options as set forth in this
26 agreement after tax are exercised at some sort of a profit
27 or capital gain or whatever, the net amount net of taxes is

1 to be contributed into the 529, isn't that correct?

2 A Correct. And that was a tax-beneficial decision
3 that we made.

4 Q Um-hmm.

5 A And a prudent one.

6 Q And that shall be a credit against your percentage of
7 college -- her percentage of college, correct?

8 A I'm not sure I agree with the use of the word,
9 "credit".

10 Q Okay.

11 A It would be applied to once you distribute those
12 funds. But how we distribute those funds, that hasn't --
13 you know, that's gotta be decided.

14 Q Just a couple small things, and then I think I'm
15 done.

16 On your current financial affidavit you have various face
17 values. I'm sorry, cash values for various life insurance
18 policies. Begins at the bottom of page 8 and runs through
19 page 9.

20 It looks like the total value, bottom line is 1961. But
21 if I add them up it's more like \$3300. Is that correct,
22 sir; for cash value for life insurance.

23 A Yeah, I -- I quite truthfully, the Lincoln Financial
24 policy does not have cash value anymore.

25 Q Which one doesn't?

26 A The Lincoln Financial, has no cash value attached to
27 it.

1 Q What's the \$1509?

2 A That's a -- that should have been taken off.

3 Q What is it, though?

4 A That was the value of -- in the last period of time.

5 You're -- bringing in the statements for the next -- to
6 verify that.

7 Q Well, I don't know what that means. In other words,
8 was there a cash --

9 A There -- there was a cash --

10 Q -- value?

11 A There was a cash value at one point in time. But
12 because of what's going on with interest rates, that the
13 cash value in that plan has evaporated. And I'm now having
14 to pay excess premiums, because there is no cash value.

15 Q Were you paying premiums out of cash value?

16 A Well, there was an accumulated situation. Yes. But
17 that's not the case anymore.

18 Q Is the reason that there's no cash value at least in
19 part because you were paying the premium out of the cash
20 value?

21 A No. There is a loan on that Lincoln Financial
22 policy.

23 Q Which was used for what purpose?

24 A Again, I'd have to go back and check what -- how the
25 assets were deployed. But I owed a lot to Tom Parrino.

26 Q Okay.

27 A I think I used some of it for closing costs on the --

1 on -- of the house, because of this -- that I couldn't
2 borrow the 50 to -- which I thought I was going to be able
3 to borrow.

4 THE COURT: Yes. That was a question. I didn't
5 know where the 1961 came from.

6 ATTY. COLLINS: Right.

7 THE WITNESS: Well, the 1961 would have been the
8 1750, I -- I know. It's -- it should be 1810.
9 Because again, I'll bring in the verification on the
10 statements. But all I know is that --

11 THE COURT: But that's 1810.

12 THE WITNESS: The cash value of this stuff has
13 changed.

14 THE COURT: That's 1810 on that page and 1509 on
15 the other page.

16 THE WITNESS: Right. But I'm -- I'm indicating
17 that that should have been removed.

18 THE COURT: No. I hear you. But --

19 THE WITNESS: Right.

20 THE COURT: -- what did the 1961 mean?

21 THE WITNESS: That's an error.

22 THE COURT: Oh. Error. Okay.

23 BY ATTY. COLLINS:

24 Q On your 2005 financial affidavit, the bond at the
25 Stanwich Country Club was \$3500 on your current financial
26 affidavit.

27 It's \$11,000. Why the difference, sir?

1 A The reason why is the club initiated a capital
2 improvement project. And that in lieu of an assessment the
3 club funded the improvements, totally about 4 million
4 dollars by floating a zero interest bond that then becomes
5 redeemable at the point in time you resign from the club.
6 It was paid in two, \$750 sections.

7 Q And you paid the increase in bond, correct?

8 A Or I had to resign from the club, yes.

9 Q And do you have any monthly expenses at the club?

10 A Plenty. Those are annotated, I believe in the
11 financial affidavit.

12 Q Other than the children's attendance at camp at the
13 club, do you have membership dues 925 a month; is that
14 correct?

15 A That is correct, sir.

16 Q And \$125 a month capital improvement assessment.

17 A That is correct, sir.

18 Q And --

19 A But I -- you made a comment about that outside of the
20 camps. No, the children use the -- the club for a variety
21 of different things. Not just a camp.

22 Q No. I'm looking for what the expenditures are, not
23 inclusive of camp expenses.

24 A Okay.

25 Q And when you have Stanwich Club with family and
26 friends under food, what does that mean?

27 A There's a food minimum at the club of roughly \$400 a

1 quarter. And the children and I are always having a great
2 debate about whether or not we're going to the club for
3 dinner or not.

4 And when we then have to give back money, we usually go
5 to the club for dinner, rather than have the food minimum
6 un-spent. That would be wasteful.

7 Q On your 2005 tax return, financial affidavit, you've
8 indicated that your monthly charitable contributions
9 including religious is \$350, whereas not it's \$800.

10 Why the substantial increase under the circumstances?

11 A Because it's my belief that there are people who are
12 far needier than I am in the world at this moment.

13 I've initiated a number of activities involving Tim at
14 the Bridgeport Rescue Mission, to try to give our children
15 some sort of a sense of -- of what I believe is not their
16 fault; which is an exposure to those who are less fortunate.

17 Q Sir, I understand --

18 A Tim and I --

19 Q -- that --

20 A Tim and I --

21 Q Does that explain the \$800 a month?

22 A You asked me a question. Okay. I'm going to explain
23 to you the various activities that go into that.

24 THE COURT: No, you don't have to.

25 THE WITNESS: All right? That involve our
26 children.

27 THE COURT: You don't have to. You answered the

1 question.

2 So what's the next question? You want him to
3 explain the activities?

4 ATTY. COLLINS: God, no.

5 THE WITNESS: Tim and I took a table at the
6 annual dinner for the Bridgeport Rescue Mission,
7 where we hosted 8 of the graduates.

8 THE COURT: You're going to tell me anyway,
9 aren't you?

10 THE WITNESS: Well, you know what? I think --

11 THE COURT: You know, if I left the room, nobody
12 would miss me.

13 THE WITNESS: I think it's important that we
14 recognize --

15 THE COURT: This is not a platform to make
16 speeches. This is a courtroom --

17 THE WITNESS: I understand.

18 THE COURT: -- answering questions. Answer the
19 question.

20 THE WITNESS: I did.

21 ATTY. COLLINS: I got it.

22 THE WITNESS: I'm explaining why it went up.

23 ATTY. COLLINS: I got it. I accept it.

24 THE COURT: Okay.

25 ATTY. COLLINS: I've no further questions.

26 THE COURT: All right. Now what we're going to
27 do is we're going to suspend. I'm going to ask you

1 both to go downstairs and get the next date from Mr.
2 Diamond.

3 When we come back next time, it's your turn to
4 rebut what he covered on cross-examination. And that
5 doesn't mean you can retry the whole case. Just
6 rebut. He covered most of it. All right?

7 THE WITNESS: Um-hmm.

8 THE COURT: Have a good evening.

9 THE WITNESS: Thank you.

10 ATTY. COLLINS: Thank you, Your Honor.

11 THE COURT: But see Mr. Diamond.

12 ATTY. COLLINS: Yes, Your Honor.

13 THE COURT: You're excused if you'd like.

14 THE WITNESS: Thank you. I'm composing myself.

15 THE COURT: I know I may have asked you this
16 last time. I don't remember. Do you have any other
17 witnesses when you complete your testimony?

18 THE WITNESS: Uh -- if I decide to go in the
19 direction of the commissions for the accountants, the
20 answer is yes.

21 THE COURT: All right. Well, I'm not going to
22 hold you to it. I just wanted a rough idea.

23 And how many witnesses; other witnesses?

24 ATTY. COLLINS: No, Your Honor.

25 THE COURT: Okay. Then get another date.
26 Court's adjourned.

27 ATTY. COLLINS: Thank you, Your Honor.

FST FA 04 0201276 S : SUPERIOR COURT
SUZANNE NOWACKI : JUDICIAL DISTRICT
OF STAMFORD/NORWALK
VS. : AT STAMFORD, CONNECTICUT
MICHAEL NOWACKI : SEPTEMBER 30, 2009

C E R T I F I C A T I O N

I hereby certify the foregoing is a true
and accurate transcript of the excerpted recorded
proceedings of the above referenced case, heard before the
Honorable Stanley Novack, Judge, in the Stamford Superior
Court, Stamford, Connecticut, on the 30th day of September,
2009.

Dated at Stamford, Connecticut this 17th day of
December 2009.

Carrie Parker
Court Monitor